Registry's translation, the French text alone being authoritative.

(Application by the CCC for interpretation)

100th Session **Judgment No. 2483**

The Administrative Tribunal,

Considering the application for interpretation of Judgment 2354 filed by the Customs Co-operation Council (CCC), also known as the World Customs Organization (WCO), on 18 January 2005 and corrected on 2 February, the reply by Mr H. B. of 11 May and the WCO's rejoinder of 22 August 2005, Mr B. having chosen not to submit a surrejoinder;

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

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 2354 delivered on 14 July 2004, the Tribunal ordered the WCO to pay Mr B., who was the complainant in the case leading to that judgment, "an amount calculated as indicated under 11 [of that judgment] in compensation for injury under all heads" (paragraph 1 of the decision). The compensation, which was intended to repair the injury caused to Mr B. by the suppression of the post he held with the Organization, was to be "an amount equivalent to two years' salary and allowances, without deducting the terminal allowance he ha[d] already received" (Judgment 2354, under 11).

2. Since the Organization disagrees with the complainant regarding the execution of that judgment, it asks the Tribunal to interpret the phrase "without deducting the terminal allowance he has already received". It contends that this phrase did not preclude the deduction, from the compensation it was ordered to pay the complainant, of an amount he had allegedly been overpaid on his terminal allowance.

3. An application for interpretation of a judgment or decision may be filed for the purpose of clarifying their meaning. Such application may be filed directly with the Tribunal without the need to satisfy the requirements of Article VII, paragraph 1, of the Statute of the Tribunal.

Either party may apply for interpretation of a judgment at any time after the judgment has been delivered (see Judgment 921, under 2).

The purpose of the application cannot be to shed light on grounds of a ruling which are alleged to be unclear or contradictory. It must concern only the decision itself. It may, however, additionally concern the grounds of the ruling if the decision refers to them explicitly, in which case they must be seen as part of the latter.

The present application for interpretation is receivable since its purpose is to clarify a phrase appearing in the grounds of the ruling to which paragraph 1 of the decision refers and without which the latter cannot be properly understood and executed.

4. The question raised by the Organization is whether that phrase prevented it from offsetting the sum it had supposedly overpaid the complainant on his terminal allowance against the amount it was ordered to pay him in compensation.

As used in the judgment, the phrase "without deducting the terminal allowance he has already received" was intended merely to prevent the Organization from circumventing the ruling by deducting from the compensation it was ordered to pay Mr B. all or part of the terminal allowance he had already received and to which he was entitled under the relevant internal regulations. The Tribunal wanted to ensure that the injury caused to the

complainant would be properly compensated irrespective of the terminal allowance to which he was legitimately entitled in accordance with the relevant rules of the Organization.

The phrase at issue might have precluded the offsetting performed by the Organization had the Tribunal been aware, at the time when it adopted Judgment 2354, both of the amount of the terminal allowance paid to the complainant and of the dispute that arose as to the way the allowance was calculated. Such, however, was not the case.

5. The phrase “without deducting the terminal allowance he has already received” must be understood as excluding the deduction only of those amounts to which the complainant was lawfully entitled by way of a terminal allowance.

6. Such offsetting would doubtless not be permissible if, owing to the nature of the employee’s claim against the Organization, it could not be fully or partly extinguished in this way. This may be the case where the offsetting of a debt is prohibited by a rule that protects a specific interest, such as provisions of national legislation that may prevent an employer from withholding all or part of the salary he owes an employee (such part corresponding to a minimum subsistence allowance) in order to offset the balance of a loan granted by the former to the latter.

In the circumstances of this case, and failing any evidence of bad faith on the part of Mr B., offsetting would also be excluded if the debt he owed to the Organization had been extinguished by prescription or could not, for some other legal reason, be recovered from him.

7. The application for interpretation is therefore receivable, and it must be made clear that Judgment 2354 did not in principle preclude the deduction of the amount Mr B. was supposedly overpaid on his terminal allowance from the sum he was owed in compensation for injury.

DECISION

For the above reasons,

The phrase “without deducting the terminal allowance [the complainant] has already received” must be interpreted as explained under 5 of this judgment.

In witness of this judgment, adopted on 4 November 2005, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2006.