

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

112th Session

Judgment No. 3066

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 2837 filed by Ms R. M. against the International Labour Organization (ILO) on 15 June 2010 and corrected on 17 July, the Organization's reply of 15 November, the complainant's rejoinder dated 18 December 2010 and the ILO's surrejoinder of 21 March 2011;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. In her first complaint, which formed the subject of Judgment 2837 delivered on 8 July 2009, the complainant impugned the decision not to award her a personal promotion in the context of the 2004-2005 consolidated exercise. She alleged inter alia that the International Labour Office, the ILO's secretariat, had breached paragraph 13 of Circular No. 334, Series 6, setting out the personal promotion system, by failing to publish the list of officials to whom such a promotion had been granted. The Tribunal, which considered this plea to be well

founded, held that the non-publication of the list in question “deprived the complainant of information that she might have found useful in filing a request for review within the meaning of paragraph 15 of the above-mentioned circular”. It therefore set aside the impugned decision and referred the case back to the Organization so that it might publish the above-mentioned list, whilst specifying in consideration 8 of the judgment that the complainant might, if she so wished, file a request for review “within a fixed period from the date of publication of the list in question”, and that if the said list had already been published, the prescribed period “[would] run from the date of notification of [the] judgment [...]”.

In a brief which she filed in April 2010 in the context of separate proceedings then pending before the Tribunal, the complainant took the Organization to task for failing to execute Judgment 2837. On 17 June she received a letter dated 11 June 2010 by which the Director of the Human Resources Development Department (HRD) informed her that “the list of personal promotions for the 2004-2005 exercise and of all other staff movements between 2005 and 2008, ha[d] been produced and distributed within the Office in March 2008, in other words before the delivery of the judgment concerning [her] first complaint”, and that this document – dated 14 March 2008 – could be consulted on HRD’s intranet site. The Director enclosed a copy of the list of officials who had received a personal promotion as shown in that document.

B. The complainant points out that in July 2008, in the reply to her first complaint, the ILO did not indicate that the list of officials who had received a personal promotion in the 2004-2005 consolidated exercise had already been published; on the contrary, it stated that it had “no reason to publish [it]”. With reference to consideration 8 of Judgment 2837, the complainant is uncertain as to the starting point of the period for filing a request for review. In this connection she adds that the list sent to her is of no use for the purposes of filing such a request, since it does not show whether the officials received a personal promotion by reason of merit or years of service; no

comparison can therefore be made with her own case. She criticises the Organization for having thus prevented her from filing a request for review before her retirement in October 2009.

C. In its reply the defendant explains that the Legal Adviser informed the complainant in a letter of 5 November 2010 that, as the names of two officials who had been granted a personal promotion on merit had been omitted from the list enclosed with the letter of 11 June 2010, a corrected version of the list of 14 March 2008 had recently been published on the ILO's intranet site, a copy of which was attached to his letter. The Organization therefore considers that the complainant, who was a candidate for personal promotion on merit, is now in a position to make a comparison with her own case.

It further contends that the list of staff movements has always been "produced and distributed" within the various departments of the Office, but that at the time when the submissions regarding the complainant's first complaint were drawn up, it was not the Office's practice to publish it.

The Organization states that, in view of the foregoing, it will waive the time limit for filing a possible request for review. In this respect it underlines that, in his letter of 5 November 2010, the Legal Adviser invited the complainant to inform him of her decision with regard to the filing of such a request.

It infers from all the foregoing that there is no longer any need to rule on the application for execution.

D. In her rejoinder the complainant expresses the view that the ILO ought to have informed her, after the delivery of Judgment 2837, that the list of officials who had received a personal promotion in the context of the 2004-2005 consolidated exercise had already been published and that it ought to have told her when the period for filing a request for review started. Since she was not advised of the identity of the persons who were granted promotion on merit until 5 November 2010, in other words until 16 months after the delivery of

the judgment, she considers that she was justified in filing her application for execution.

E. In its surrejoinder the Organization maintains its position. It states that, after she had submitted a request for review on 18 December 2010, the complainant was advised by letter of 4 February 2011 that the Director-General, endorsing the opinion of the panel that had carried out the review, had decided to dismiss her request.

CONSIDERATIONS

1. In Judgment 2837, delivered on 8 July 2009, the Tribunal set aside the decision of 30 January 2008 by which the Director-General of the International Labour Office had dismissed the grievance which the complainant had submitted in order to contest the refusal to grant her a personal promotion in the context of the 2004-2005 consolidated exercise.

In point 2 of the decision in the above-mentioned judgment, the Tribunal referred the case back to the ILO so that it might proceed as indicated under consideration 8, which read as follows:

“The impugned decision must [...] be set aside, [...] and the case must be referred back to the Organization so that it may publish the list of officials who were granted a personal promotion in the context of the 2004-2005 consolidated exercise. The complainant may, if she so wishes, file a request for review within a fixed period from the date of publication of the list in question.

If the said list has already been published, the prescribed period shall run from the date of notification of this judgment.”

2. On 15 June 2010 the complainant, who did not consider that Judgment 2837 had been duly executed because the list of persons who had received a personal promotion in the context of the 2004-2005 consolidated exercise had not been published, filed this application for execution with the Tribunal.

3. The Organization submits that there is no longer any need to rule on this application as point 2 of the decision in the judgment in

question has been “indisputably fully executed”. It states that in June 2010 the complainant was provided with the above-mentioned list of 14 March 2008, that she was informed of the two names which had been omitted from it in a letter of 5 November 2010, that a corrected list has been published on the Organization’s intranet site and that the said letter specified whether the officials had been granted a personal promotion by reason of merit or years of service.

4. The complainant, who was a candidate for personal promotion on merit, emphasises that she did not therefore receive the complete list of persons who were granted personal promotion on merit in the context of the 2004-2005 consolidated exercise until 16 months after the delivery of Judgment 2837 and that her application for execution was therefore well founded when she filed it in June 2010.

5. The Tribunal notes that, although the complainant, having received the list in question, was able to submit a request for review in December 2010, so that it is no longer necessary to order the execution of point 2 of the decision in the above-mentioned judgment, the fact remains that the Organization did not fully execute this judgment until 5 November 2010, in other words some five months after the present application was filed.

6. According to the Tribunal’s case law, there is no standard time limit for executing judgments. The time needed for their execution depends on the nature and the scope of the action which the organisation is required to take and it must be allowed a reasonable amount of time depending on the circumstances and, among other things, the interests at stake. Where a judgment provides that a case is sent back to an organisation for a new decision, the time needed depends on the circumstances of the particular case. (See, in particular, Judgment 1812, under 4.)

7. In the instant case, it is clear that the publication of a list which was already available should not have taken so long. In addition,

this delay caused the complainant injury, because her legitimate expectation that the Tribunal's judgment would be swiftly and correctly executed was thwarted, and she was therefore unable to file a request for review of a decision adversely affecting her within a reasonable period of time, or indeed before her retirement.

8. The application will therefore be allowed and the complainant must be awarded 2,000 Swiss francs in compensation for the moral injury which she suffered.

DECISION

For the above reasons,

The ILO shall pay the complainant 2,000 Swiss francs in compensation for the moral injury suffered.

In witness of this judgment, adopted on 18 November 2011, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet