

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**ILO**

**v.**

**D.**

(Application for interpretation filed by the ILO)

**121st Session**

**Judgment No. 3564**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 3157 filed by the International Labour Organization (ILO) on 21 August 2015, the reply of 16 September from Mr A. D., the ILO's rejoinder of 9 October, Mr D.'s surrejoinder of 19 October and the ILO's further written submissions of 22 September 2015, Mr D. having chosen not to comment on these submissions;

Considering Article II, paragraph 1, of the Statute of the Tribunal;  
Having examined the written submissions;

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

In Judgment 3157, delivered on 6 February 2013, the Tribunal set aside the selection process which had been challenged by Mr D., on the grounds that he had not received equal treatment when the shortlist had been drawn up. It held that the ILO, which had determined that he did not possess all the qualifications required for the Property Inventory Officer post for which he had applied, could not lawfully exclude him from the technical evaluation when two other candidates, who did not possess those qualifications either, were shortlisted alongside the successful candidate, Mr X. The Tribunal therefore cancelled the

latter's appointment, while specifying that he must be shielded from any injury, and awarded Mr D. moral damages and costs.

After Mr D. had received these sums, he was contacted by the Administration, which explained that, although the execution of Judgment 3157 "normally" required the resumption of the competition at the shortlisting stage, following the Director General's announcement of 12 February 2013 concerning a reform of the organizational structure, there were doubts as to whether the post held by Mr X would continue to exist. As there was a possibility that opportunities for reassignment might arise in an area "more closely matching [his] aspirations and interests", Mr D. agreed with the Administration that he would wait until the reform had reached a more advanced stage before demanding the full execution of Judgment 3157. As the restructuring took longer than anticipated, it was not until 27 March 2015 that Mr D., who had not been reassigned after all, was informed in writing that the ILO had cancelled the competition for the Property Inventory Officer post – the abolition of which was under consideration – as well as Mr X's appointment as of 1 August 2009. In view of the time which had elapsed since the delivery of Judgment 3157, Mr D. was granted compensation in the amount of 2,000 Swiss francs. As Mr X had to be shielded from any injury ensuing from the cancellation of his appointment, his case was to be submitted to the Recruitment, Assignment and Mobility Committee.

On 2 April 2015 Mr D., who considered that the selection process had not been resumed at the stage at which it had become flawed as required by Judgment 3157, asked the ILO to file an application for interpretation of that judgment with the Tribunal.

In its application the ILO endeavours to show that, since Judgment 1306, the Tribunal's case law has not been consistent with regard to the measures which an organisation must take in order to execute a judgment cancelling a competition, and it contends that Judgment 3157 did not require the resumption of the competition at the stage at which it had become flawed. In support of this view, it points out that, in the instant case, the flaw in question could not have had any bearing on the outcome of the competition, since Mr X had been the only

candidate who met all the criteria listed in the vacancy notice. It therefore maintains that it acted in the best interests of Mr D., who stood no chance of selection if the competition process had been resumed at the stage at which it became flawed. Having drawn the Tribunal's attention to the fact that the post to which Mr X was appointed "ceased to exist in 2012", the ILO asks the Tribunal to determine whether the ruling in Judgment 3157 required the resumption of the competition, or whether "the change in circumstances since the holding of the competition in 2009 rendered the execution of the judgment pointless".

Mr D. submits that Judgment 3157 was clear, but that the ILO has taken no steps to transfer Mr X who, to the best of his knowledge, still holds the post of Property Inventory Officer. He alleges that the ILO misused its authority and breached the *res judicata* rule by "secretly remodelling" Mr X's job description. In his view, the ILO has "arranged the non-execution of Judgment 3157" in such a way that Mr X "has been holding the post long enough for it to be inconceivable that he would not obtain the post if it were to be advertised again, or in the event of a transfer to similar duties". Mr D. admits that he does not have the specific training required for the post to which Mr X was appointed, but he says that he "trust[s] that the Organization [would] make a point of facilitating [his] ad hoc training, by way of compensation", if the competition were to be resumed. Lastly, he deplores the fact that the ILO has not produced "a list of actions taken to reassign him".

In response to the latter submission, the ILO produces, in its further written submissions, a series of e-mails which, it contends, prove that it attempted in good faith to find an amicable solution to the dispute, although it does admit that it might sometimes have lacked diligence.

## CONSIDERATIONS

1. An application for interpretation can only be filed for the purpose of clarifying the decision contained in a judgment or the

grounds therefor if the decision refers to them explicitly, in which case they must be seen as part of the latter (see Judgment 2483, under 3).

2. By Judgment 3157, which forms the subject of this application for interpretation, the Tribunal cancelled a selection process and the resultant appointment on the grounds that Mr D. did not receive equal treatment when the shortlist was drawn up. The decision in that judgment, read in isolation or in conjunction with the grounds for it, is unambiguous and raises no difficulty of interpretation; the Administration had to consider the procedure and ensuing decision which were set aside as having never occurred. All that it had to do was to restore a lawful situation by following the correct procedure and by issuing a decision which was not flawed (see Judgment 1306, under 6).

3. None of the submissions of the Organization or Mr D. – who says that he “welcomes” the application for interpretation – shows that the execution of Judgment 3157 had been prevented owing to its lack of clarity. In reality, the ILO is asking the Tribunal for its opinion on the most appropriate manner of executing the judgment, which has not yet been fully executed for reasons resulting from initiatives taken of the Organization’s own volition, despite the length of time which has elapsed since it was delivered.

The purpose of the ILO’s request is not therefore genuinely to seek interpretation of Judgment 3157. For this reason, the application must be dismissed (see Judgment 2806, under 6).

#### DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 5 November 2015, Mr Claude Rouiller, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

*(Signed)*

CLAUDE ROUILLER    DOLORES M. HANSEN    PATRICK FRYDMAN

DRAŽEN PETROVIĆ