

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

T. B. (No. 4)

v.

WHO

(Application for execution)

127th Session

Judgment No. 4093

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3689 filed by Mr J. T. B. on 4 September 2017, the reply of the World Health Organization (WHO) of 30 October 2017, the complainant's rejoinder of 16 January 2018 and WHO's surrejoinder of 7 May 2018;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 3689, delivered in public on 6 July 2016 on the complainant's fourth complaint, after having noted, amongst other things, that the complainant had been exposed to a considerable risk of contracting onchocerciasis when he had been employed by WHO as a blackfly collector, the Tribunal held that "his ocular disorder must be regarded as attributable to the Organization". Under point 2 of the decision in that judgment, the Tribunal therefore ordered WHO to pay the complainant the sums due to him by virtue of his financial entitlements as indicated in consideration 4, specifying that these sums were to be paid "with interest as specified in that same consideration". The latter read in part as follows:

“[T]he complainant shall be awarded all his entitlements under the WHO rules in force at the date of medical expenses claim, i.e. 5 August 1994, and he shall be paid the corresponding amounts within 90 days of the delivery of this judgment, failing which they will bear interest at the rate of 5 per cent per annum from the date of the delivery of the judgment until the date of their payment.”

2. While the compensation of 30,000 United States dollars for moral injury which WHO was also ordered to pay to the complainant pursuant to Judgment 3689 was paid to him in August 2016, the above-mentioned sums were not paid to him until April and May 2017, that is to say well beyond the period of 90 days provided for in the judgment.

The complainant asks the Tribunal, through an application for execution, to order the Organization to pay him the interest on arrears which, under the terms of the said judgment, it should have paid him and which it has nevertheless refused to pay him.

3. It should be recalled that the Tribunal’s judgments, which, under Article VI of its Statute, are “final and without appeal” and which, furthermore, have *res judicata* authority, are immediately operative (see, for example, Judgments 3003, consideration 12, and 3152, consideration 11). As they may not later be called into question except when an application for review is allowed, they must be executed by the parties as ruled (see, for example, Judgments 3566, consideration 6, and 3635, consideration 4). The parties must work together in good faith to execute judgments (see, for example, Judgments 2684, consideration 6, and 3823, consideration 4).

4. Under the “Rules governing compensation to staff members in the event of death, injury or illness attributable to the performance of official duties on behalf of the World Health Organization” of 15 November 1992, applicable in the present case, the sums due to the complainant included an invalidity pension – to be paid, in part retroactively, from 1994 – as well as compensation for permanent loss of function and reimbursement of medical and travel expenses.

5. With regard to the invalidity pension and the compensation for permanent loss of function, the amount of which was to be determined on the basis of a medical examination that the complainant was invited to undergo, WHO ascribes the delay in payment to the fact that Dr B., who was responsible for conducting the examination, had failed to provide it with some of the results, despite numerous reminders. Arguing that this failure cannot be attributed to the Organization and that it prevented the payment of the corresponding sums within the prescribed period, especially since the determination of those sums also required highly complex calculations, WHO submits that it should not be liable for the interest provided for in Judgment 3689.

However, it should be noted, firstly, that the cause of the delay in the execution of the judgment can in no way be attributed to the complainant, who, for his part, cooperated in good faith. Indeed, it appears from the documents in the file that he underwent the medical examination in question promptly, at a polyclinic in Abidjan chosen by WHO itself.

Secondly, while the Tribunal's case law recognizes, as an exception to the principle recalled in consideration 3, above, that in some cases an international organization may refrain from executing a judgment as ruled if execution proves impossible owing to subsequent facts or to pre-existing facts of which the Tribunal was unaware when it ruled on the case (see, *inter alia*, Judgments 3261, consideration 16, and 3824, consideration 4), WHO does not have grounds to maintain, in this case, that it faced such an impossibility. Indeed, even if it had not been able to intervene more effectively with Dr B. in order to obtain all of the information that it required in a timely manner, the Organization could, for example, have asked the complainant to undergo another medical examination by another doctor. Furthermore, it appears from an e-mail sent to the complainant on 10 February 2017 that, while the examination results initially transmitted by Dr B. were considered insufficient to assess his loss of function, WHO nevertheless eventually decided to continue the procedure by submitting the file to the competent expert doctor despite the absence of the missing data, from which it can be deduced that the data were in fact not strictly necessary, and there is no

indication in the file that this solution could not have been implemented earlier.

Lastly, while it is true that it was in some respects difficult, in this case, to determine both the amount of the complainant's invalidity pension and the compensation due for permanent loss of function, in view of the diversity of the parameters to be taken into account and the long period of time over which certain calculations had to be applied retroactively, WHO in no way demonstrates that it would have been impossible for it to determine these amounts within the time limit allocated for it to do so.

6. With regard to the reimbursement of medical and travel expenses, WHO argues that the complainant, contrary to the requirements, had produced only some of the original invoices and proofs of payment relating to the expenses in question, which had made his file more complex to process. However, while it is true that the complainant was able to provide supporting documents for only a small number of the expenses incurred in this respect, which can be easily understood given that they spanned a period of 22 years, it was possible to estimate the total amount of these expenses. Indeed, that is the solution that was ultimately adopted by the Advisory Committee on Compensation Claims, the competent body, which has established a concise methodology for this purpose. Here again, there is no reason to consider that this estimate could not have been made within the prescribed period.

7. Moreover, if the Organization considered that it was impossible to execute Judgment 3689 in accordance with its terms, it should have filed an application for review with the Tribunal (see Judgments 3635, consideration 8, or 3825, consideration 8). However, it did not lodge such an application in this case.

8. In view of the above considerations, WHO is required to pay the complainant interest on arrears as ordered by the Tribunal in Judgment 3689. It should be recalled in this regard that such interest simply represents an objective form of compensation for the time that has elapsed since the date on which the principal amount was due, and

that the mere fact that there was a delay in the payment of that amount is sufficient to justify payment of interest, whether or not the debtor was at fault (see, for example, Judgment 1403, consideration 8).

9. The Organization asks the Tribunal, in the event that its position is rejected, “not to order it to pay interest calculated on the sums due but to pay a fixed lump-sum in full and final settlement”*. However, it is not open to the Tribunal, when examining an application for execution, to modify the content of the provisions of the judgment in respect of which the application is made and it cannot therefore, in any event, determine the amount of compensation for late payment of the sums due to the complainant in a manner different to that provided for in Judgment 3689.

DECISION

For the above reasons,

WHO shall pay the complainant, in accordance with point 2 of the decision in Judgment 3689, interest at a rate of 5 per cent per annum on the sums due by virtue of his entitlements as indicated in consideration 4 of that judgment that were not paid to him within 90 days of the public delivery of Judgment 3689. Such interest shall accrue, for each of these sums, from the date of the public delivery of the said judgment until the date of their payment.

In witness of this judgment, adopted on 15 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Patrick Frydman, Vice-President, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

* Registry’s translation.

Delivered in public in Geneva on 6 February 2019.

(Signed)

GIUSEPPE BARBAGALLO PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ