

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

FORTY-NINTH ORDINARY SESSION

In re DJOEHANA (No. 2)

(Application for interpretation)

Judgment No. 538

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Akbar Djoehana on 2 April 1982 for interpretation of Judgment No. 359, the reply filed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) of 19 May, the complainant's rejoinder of 23 June and the Organization's surrejoinder of 3 September 1982;

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

Having examined the written evidence;

CONSIDERATIONS:

The parties' pleas

1. In Judgment No. 359 the Tribunal ordered UNESCO to pay the complainant "compensation amounting to the remuneration which he would have received during one year".

In compliance with that decision UNESCO paid him 198,816.75 French francs. He considered that inadequate. It paid a further 1,158.41 United States dollars. He was still not satisfied. The parties then discussed the calculation but failed to agree. The complainant has filed this application for an interpretation of Judgment No. 359.

He asks (1) that the compensation should be paid to him in French francs after conversion according to the exchange rates applied in the Organization from 1 February 1977 to 31 January 1978; (2) that the Organization should pay all the amounts he would have earned had he been employed over a one-year period; and (3) that the Tribunal declare that UNESCO owes him 33,174.89 French francs, plus 6,000 French francs as costs.

The Organization invites the Tribunal to dismiss the application. While agreeing to pay in French francs it believes that the salary due to the complainant should be as defined by the Staff Regulations and Staff Rules and exclude allowances. It further contends that the sum payable in United States dollars should be converted into French francs at the date at which it is paid in full, not at the date at which each monthly salary fell due.

There are three points to be settled: the meaning of salary, the exchange rate, and costs.

Salary

2. Unless qualified by explanation the term "salary" in Judgment No. 359 must be taken to denote salary as defined by the Staff Regulations and Staff Rules. As so defined salary includes net salary and salary adjustment. It does not, under the provisions in force, include dependant's allowances or temporary personal allowances. The claim to such allowances is therefore mistaken, and UNESCO was right to deduct them in its supplementary calculation of the sum due.

The exchange rate

3. The complainant is entitled under Judgment No. 359 to payment of compensation amounting to one year's salary. He was paid by the month, not at the end of the year. To place him in the position the Tribunal intended, the sum due should therefore be calculated monthly, i.e. converted from United States dollars into French francs at the dates at which payment would have fallen due. The complainant is therefore right to ask to have the sums converted at

the rates prevailing at the dates at which each monthly payment would have fallen due, not at the date when the full payment is made.

The Tribunal invites the parties to reach agreement between themselves on the amount which is still due. This is a matter of mere calculation and unlikely to afford scope for discussion.

Costs

4. The complainant has in part succeeded and is entitled to an award of 3,000 French francs as costs.

DECISION:

For the above reasons,

1. The amount to be paid to the complainant shall be converted from United States dollars into French francs at the rate prevailing at the date at which each monthly payment would have fallen due.

2. The Organization shall pay him 3,000 French francs as costs.

3. The other claims are dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner