

## **EIGHTY-SECOND SESSION**

### ***In re Tuffuor (No. 2)***

#### **(Application for execution)**

#### **Judgment 1588**

The Administrative Tribunal,

Considering the application filed by Mr. Kwame Amoako-Tuffuor on 26 February 1996, the reply of 5 April from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the complainant's rejoinder of 10 July and the Organization's surrejoinder of 25 September 1996;

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

Having examined the written submissions:

#### **CONSIDERATIONS**

1. UNESCO dismissed the complainant on 23 January 1990. Judgment 1251, on his first complaint, declared the dismissal unlawful. It ordered UNESCO to pay him an amount equivalent to four years' salary and allowances plus any sums due for "himself and his family in respect of repatriation from Nairobi to Accra". On 25 March 1993 the Organization paid him 229,470.98 United States dollars, made up of \$215,768, the equivalent of four years' pay, and \$13,702.98, the amount of the repatriation grant. He says that it has not properly executed the judgment: the sum paid included neither the expenses he had incurred for travel by himself and his family, nor education allowances for his children, nor his entitlements to home leave in 1989, nor compensation for annual leave accrued at the date of his dismissal.

2. UNESCO replies that his claims to travel expenses and education allowance, though receivable, are devoid of merit and that his other claims are irreceivable because they have nothing to do with the execution of Judgment 1251.

3. As to his travel expenses, the Tribunal did order UNESCO to pay the costs of repatriating him and his family. But despite its insistence he has never sent it receipts or tickets showing that he and his family did actually go to Accra after his dismissal and, if so, when. All he has done is produce documents from Air France listing its fares and referred the Organization to travel agents in Nairobi. Those agents gave him an estimate of costs but have not confirmed that he actually made use of their services for his repatriation.

4. Though it has never denied owing him the costs of repatriation to Accra, UNESCO is therefore unable to refund them. Under rules of a kind common to all international organisations he has to give evidence of the exact amount of the expenses actually incurred. According to stamps in his passport he left Nairobi on 10 March 1990 and arrived in Ghana the same day. But that does not suffice to establish his own travel costs, let alone his wife's and children's. UNESCO is not thereby relieved of its debt to him. But on the present evidence, and until he submits the required proof, his claims under this head must fail.

5. So too must his claim to the payment of education expenses. Under Staff Rule 103.12 such sums are payable only on submission of receipts of amounts paid for expenses actually incurred. Having got from him no such evidence UNESCO need not include education expenses in the amount it reckoned it had to pay in execution of Judgment 1251.

6. He never put to the Appeals Board of UNESCO his claims to home leave entitlements and to compensation for accrued annual leave. The defendant contends that they are therefore irreceivable. In his first complaint he did seek an award of damages for unlawful dismissal and the amount of his end-of-service entitlements was not material. That issue being therefore a new one, he ought to have exhausted his prior remedies by lodging a separate internal

appeal. But there is no need to entertain UNESCO's objections to receivability. By a decision of 9 June 1996 it paid \$3,224.23 into the complainant's bank account in compensation for, among other things, the score of days of annual leave he was entitled to. So he has no cause of action on that count. As for home leave he never took, there is plainly no question of any refund by the Organization of fictitious expenditure. The amount that UNESCO paid the complainant in execution of Judgment 1251 did not have to include any such payment.

7. UNESCO has waived a claim to payment of \$15,529.30 which it said he owed it and has waived deduction of that amount from the sums due to him. So his comments on that score are immaterial.

8. Nor can he succeed in his claim to damages for UNESCO's alleged lack of goodwill and good faith in dealing with his case. The Tribunal is satisfied that UNESCO has duly and promptly executed Judgment 1251. He has only himself to blame for the consequences of his own failure to produce the evidence that it requires before making him further payments.

## DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

*(Signed)*

William Douglas  
Michel Gentot  
Mella Carroll  
A.B. Gardner