

110th Session

Judgment No. 2961

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 2796 filed by Mr D. R. S. against the International Federation of Red Cross and Red Crescent Societies (hereinafter “the Federation”) on 18 May 2009, the Federation’s reply of 12 October, the complainant’s rejoinder of 17 October and the Federation’s surrejoinder of 25 November 2009;

Considering Article II, paragraph 5, 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. Facts relevant to this case are set out in Judgment 2796, delivered on 4 February 2009, concerning the complainant’s first complaint. In that judgment, the Tribunal ordered the Federation to pay the complainant, whose contract had been terminated with immediate effect on 17 October 2006, the net salary and other allowances he would have received had his contract continued until 11 March 2007, less any amount earned by him from other employment during that period, together with interest at the rate of 8 per cent per annum on the

resulting sum from 11 March 2007 until the date of payment. It also ordered the Federation to pay the complainant moral damages in the amount of 15,000 Swiss francs.

By a letter of 9 March 2009 the acting legal counsel informed the complainant that pursuant to Judgment 2796 the amount of 51,273.65 Swiss francs would be transferred to his bank account. Since the complainant had confirmed that he had received no employment income between 17 October 2006 and 11 March 2007, this payment included his net salary and other allowances for that period (including monthly subsistence allowance, child allowance and pension contributions), interest on this amount, and moral damages as determined by the Tribunal.

In a letter dated 18 March 2008 (*recte* 2009) addressed to the Secretary General, the complainant requested the payment of an additional 9,427.57 francs, plus interest from 10 March 2009, alleging a number of errors in the calculation of the amount paid to him. By a letter of 5 May 2009, which is the impugned decision, the Federation provided details of the amount paid. It acknowledged that a calculation error had been made with respect to his monthly subsistence allowance and informed him that he would be paid an additional 257.64 francs in “full satisfaction of all amounts due” pursuant to Judgment 2796.

B. The complainant contends that the Federation has not paid the correct amount pursuant to Judgment 2796 and that the calculation of the amount paid to him lacks transparency. He explains that the Federation granted him only one allowance, the monthly subsistence allowance, whereas he should also have received monthly accommodation allowances, amounting to 1,242 Swiss francs per month, and monthly travel allowances for family visits, amounting to 124.20 francs per month. He also argues that there is an error in the calculation of compound interest because one day was not included in the calculation. Moreover, the Federation did not include the “pension fund allowances and supplements payments” in its calculation. Lastly, he submits that it also omitted to pay all allowances for the period from 14 September until 17 October 2006.

The complainant asks the Tribunal to order the Federation to pay him 9,427.57 Swiss francs plus compound interest at the rate of 8 per cent per annum.

C. In its reply the Federation indicates that, in order to settle the case and despite the fact that it was not obliged to do so, it paid the complainant the additional amount claimed, that is to say 9,427.57 Swiss francs, plus interest. Thus, the complainant received in full and final settlement 9,781.63 francs on 27 August 2009. However, in an e-mail of 2 September 2009 he informed the legal counsel that he was not withdrawing his complaint given that the calculation of his pension entitlements was neither “clarified” nor “transparent”. Although he stated that he was not accepting the payment made, he has kept the amounts paid to him. Having paid the amount ordered by the Tribunal as well as the additional amount claimed by the complainant, the Federation argues that the application for execution is moot.

On the merits, the defendant contends that the complainant is not entitled to payment in respect of accommodation. The Federation provides staff on mission with suitable and safe accommodation, which it rents, but no monetary allowance is due to staff in that respect. It adds that, since the complainant has not incurred any expenses for family visit travel between 17 October 2006 and 11 March 2007, he cannot be entitled to payment in that respect. Concerning the monthly subsistence allowance, it indicates that, according to the records, the complainant was due only 21 days in September 2006. However, given that it could not verify whether the nine days excluded in September were excluded due to the end of the complainant’s mission, or to holidays or other leave, the Federation decided to use the total possible monthly subsistence allowance as the basis of calculation for the payment effected. The defendant further asserts that the full amount of contributions was paid to the Pension Fund and to the Supplementary Pension Fund.

D. In his rejoinder the complainant states that he is not willing to withdraw his complaint because he considers that staff should be

informed of the “institutional intra-corporate climate of fear and unequal treatment [and] its final outcomes”.

E. In its surrejoinder the Federation maintains its position and rejects the complainant’s accusations.

CONSIDERATIONS

1. In Judgment 2796, delivered on 4 February 2009, the Tribunal ordered the Federation to pay the complainant “the net salary and other allowances he would have received had his contract continued until 11 March 2007 less any amount earned by him from other employment during that period, together with interest at the rate of 8 per cent per annum on the resulting sum from 11 March 2007 until the date of payment”, as well as moral damages in the amount of 15,000 Swiss francs.

2. In his application for execution the complainant contends that the Federation did not completely execute Judgment 2796; he contests the amount of 51,273.65 francs that was paid to him in execution of that judgment on 10 March 2009 and requests an additional 9,427.57 francs plus compound interest at the rate of 8 per cent per annum from that date. He submits that the Federation did not grant him accommodation allowances, travel allowances and “Pension fund allowances”, that it calculated compound interest for 730 instead of 731 days and that it omitted to pay all allowances for the period from 14 September until 17 October 2006.

3. In its reply the Federation states that, in order to settle the case without any obligation or prejudice, it paid the complainant all additional amounts claimed (9,427.57 francs plus compound interest). On the merits, it contends that the complainant is not entitled to payment of accommodation or travel allowances as they were linked to situations which no longer existed during the relevant period. Regarding the accommodation allowance, the Federation explains that although suitable and safe accommodation had to be provided during the period of official missions, the value of the accommodation cannot be equated to a monetary allowance. As for the travel allowance, staff

whose family were accommodated in Medan were indeed entitled to reimbursement of up to 100 United States dollars per month in respect of travel expenses incurred for family visits, but the complainant did not incur such expenses during the relevant period. Regarding the monthly subsistence allowance, the Federation observes that it could not verify the reason for the exclusion of nine days in September 2006 and therefore decided to use the total possible monthly subsistence allowance as the basis for its calculation. It also states that the interest was correctly calculated from 11 March 2007 until the date of payment and that the full amount of all employee contributions were paid to the Pension Fund and to the Supplementary Pension Fund and were calculated as the additional benefits the complainant would have accrued in the two pension schemes during the period 17 October 2006 to 11 March 2007.

4. In his rejoinder the complainant declares that he is “not withdrawing the proceeding” because he considers it very important that other Federation staff and its Staff Association should be informed about “the whole case of institutional intra-corporate climate of fear and unequal treatment”. He does not specifically contest the defendant’s arguments and calculation, nor does he deny that he has received all additional amounts claimed.

5. It is plain that the Federation has given the complainant full satisfaction during the proceedings and there is no longer a cause of action. Under the circumstances, the Tribunal will not award costs, in view of the Federation’s overall behaviour.

DECISION

For the above reasons,

The Tribunal does not need to rule on the complainant’s claim to payment of 9,427.57 Swiss francs, plus compound interest at the rate of 8 per cent per annum from 10 March 2009.

In witness of this judgment, adopted on 2 November 2010, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Patrick Frydman
Catherine Comtet