

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

116th Session

Judgment No. 3263

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3032 filed by Mrs B. B.-W. on 3 July 2012, the reply of the International Labour Organization (ILO) of 22 October, the complainant's rejoinder of 15 November 2012, the ILO's surrejoinder of 19 February 2013, the complainant's further submissions of 19 March and the ILO's final observations thereon of 30 May 2013;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

CONSIDERATIONS

1. The complainant and one of her colleagues impugned before the Tribunal the decisions of 26 May 2009 by which the Director-General of the International Labour Office, the ILO's secretariat, dismissed their grievances challenging the results of a competition to fill a post of senior translator/reviser at grade P.4.

2. In Judgment 3032, delivered on 6 July 2011, the Tribunal decided as follows:

- “1. The decisions of 26 May 2009 as well as the decisions resulting from the competition are set aside.
2. The competition process shall be resumed as indicated under 25 [...].
3. The ILO shall pay each complainant 5,000 Swiss francs in compensation for the moral injury caused to her.
4. It shall also pay each of them 5,000 francs in costs.
[...].”

3. Consideration 25 of that judgment reads:

“[...] as the competition process must be annulled [...], the competition will be resumed from the point at which the procedure was flawed.

The decisions resulting from the competition as well as those of 26 May 2009 must therefore be set aside, on the understanding that the defendant must shield the selected candidates from any injury that may flow from the quashing of an appointment they had accepted in good faith [...].”

4. On 3 July 2012 the complainant filed an application for execution of that judgment asking the Tribunal to declare null and void two decisions taken, according to her, on 3 August 2011 and 16 November 2011, on the grounds that they conflict with the *res judicata* authority of Judgment 3032, and to find that the ILO has incorrectly executed that judgment. She also claims compensation for the injury she considers she has suffered, which she estimates at 20,000 euros, as well as costs.

5. In support of her application, she first contends that, according to the case law, a complainant may directly submit to the Tribunal all claims related to a failure to respect the *res judicata* authority of its judgments in the course of their execution. In the instant case, she takes the ILO to task for disregarding the *res judicata* authority of Judgment 3032, particularly with respect to point 1 of the ruling setting aside the decision which she challenged in her first complaint and the decisions resulting from the competition.

She states that points 3 and 4 of the ruling in Judgment 3032 have been executed and that, with regard to point 2, she “will not enter [...] into a discussion of whether it has been complied with, since the competition process has been resumed and has given rise to some new administrative decisions which [she] has elected to challenge before the internal appeal bodies”.

In conclusion, the complainant considers that the ILO incorrectly executed Judgment 3032 by ensuring that the setting aside of certain decisions required by the Tribunal’s ruling had no effect, and that the ILO’s conduct, “irrespective of whether or not it was marked by bad faith, has deeply affected [her]”. That is why she seeks compensation for injury.

6. The ILO requests the Tribunal to dismiss the application for execution and the related claims as being irreceivable and completely groundless. It states that the action against it is vexatious and taken with the purpose of involving it in needless expenditure and asks that the complainant be ordered to pay it the “symbolic sum” of 100 Swiss francs.

7. It submits first that, as the application is groundless, the complainant has no cause of action; secondly, that the plea that Judgment 3032 has been incorrectly executed is not only irreceivable but also unfounded; and, lastly, that the plea that she has been “stigmatised” is equally groundless.

8. The Tribunal notes from the evidence in the file that, following Judgment 3032 by which certain decisions were set aside, the ILO resumed the competition process on 24 November 2011 and that the competition was completed. The judgment was therefore fully executed.

9. The complainant is mistaken in contending that the record of a meeting held on 3 August 2011 and a minute of 16 November 2011 from the Director of the Human Resources Development Department evidence decisions of the Organization not to execute the above-mentioned judgment. No such decisions can be inferred from reading these documents. Moreover, the mere fact that the judgment

has been executed shows that no decision not to execute it had been taken.

10. Lastly, the complainant has no grounds for submitting that the ILO should be ordered to pay moral damages because the above-mentioned minute of 16 November 2011 was displayed in public, since it has not been established that the Organization ordered that posting.

11. The complainant's application for execution must therefore be dismissed.

12. The Tribunal will not grant the Organization's counterclaim that the complainant should be ordered to pay the symbolic sum of 100 Swiss francs because, contrary to its submissions, the application was not in any way vexatious.

DECISION

For the above reasons,

The application for execution is dismissed, as is the counterclaim.

In witness of this judgment, adopted on 7 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller
Seydou Ba
Patrick Frydman
Catherine Comtet