

R.-G. (No. 3)

v.

**International Federation of Red Cross and
Red Crescent Societies**

(Application for execution)

121st Session

Judgment No. 3567

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3208 filed by Mr P. R.-G. against the International Federation of Red Cross and Red Crescent Societies (hereinafter “the Federation”) on 20 January 2014 and corrected on 6 February, the Federation’s reply of 10 June and the complainant’s letter of 25 July 2014 informing the Registrar of the Tribunal that he did not wish to enter a rejoinder;

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

Having examined the written submissions;

CONSIDERATIONS

1. On 20 January 2014 the complainant filed an application for execution with the Tribunal seeking execution of Judgment 3208. The background leading to that decision is as follows. The complainant commenced working with the Federation in 1993. In 2009 the Federation announced as part of a more general reorganisation that the Department in which the complainant worked was to be merged with two other units. The position the complainant then held was to be abolished. During the latter part of 2009, the complainant took steps to secure a

position in the new structure in circumstances where he had been advised on 23 July 2009 that his employment was to terminate in six months for redundancy. However he was unsuccessful and ultimately his contract was terminated effective 31 January 2010.

On 4 February 2010 he filed a grievance with the Joint Appeals Commission (hereinafter “the Commission”) for unfair dismissal. On 31 July 2010 the Panel established by the Commission reported to the Secretary General, though on 18 August 2010 the Secretary General sought further clarification. The Panel provided it on 30 September 2010. The essence of the Panel’s report was that the complainant be reinstated and that there had been significant deficiencies in the way his circumstances had been considered. By letter dated 25 November 2010 the Secretary General informed the complainant that, in substance, he rejected the Panel’s findings and rejected the recommendation that the complainant be reinstated. The complainant impugned this decision in proceedings before the Tribunal.

2. On 4 July 2013 the Tribunal delivered Judgment 3208. The impugned decision was set aside and the matter was remitted to the Federation for the Secretary General to make a new decision having regard to the Tribunal’s findings. The primary deficiency identified by the Tribunal in the impugned decision was that the Secretary General had not given adequate reasons for rejecting the conclusions and recommendations of the Panel. The Tribunal also ordered the Federation to pay the complainant moral damages and costs.

3. As noted earlier, the application for execution was filed on 20 January 2014. At that point, the Tribunal’s order requiring the Secretary General to make a new decision had not been complied with, though the moral damages and costs had been paid on 26 July 2013, shortly after the public delivery of the Judgment. In the application for execution the complainant made several claims for relief on the assumption that the termination of his employment had been unlawful. On 27 February 2014, the Secretary General wrote to the complainant detailing why he had made the impugned decision and why he had

rejected many of the Panel's conclusions and recommendations. This letter was annexed to the Federation's reply filed on 10 June 2014. The Federation argues that the application for execution has therefore become moot. The complainant did not file a rejoinder challenging, in this application for execution, what was said (or not said) in the letter. He notified the Tribunal of his intention to refrain from doing so because he had commenced fresh proceedings before the Tribunal challenging the decision of 27 February 2014. In those circumstances it would be inappropriate to express a view in these execution proceedings about the decision of 27 February 2014 and the lawfulness of the decision to terminate his employment.

There are two remaining issues in the application for execution and to this extent the application is not moot, notwithstanding that the legality of the decision of 27 February 2014 remains to be determined by the Tribunal in the fresh proceedings commenced by the complainant. The first is the complainant's claim for legal expenses in the amount of 5,000 Swiss francs "in pursuing the enforcement of Judgment 3208" and his claim for exemplary moral damages for the Federation's "delay and failure to act in good faith in executing" the above Judgment.

4. The complainant acted reasonably in filing his application for execution in late January 2014. He did so after making several requests for the new decision required by the Tribunal's orders and a little over six months had elapsed since the orders had been made. Thus he is entitled to reasonable costs associated with making the application which the Tribunal assesses in the sum of 3,000 Swiss francs.

5. In its judgment, unlike some others, the Tribunal did not set a time limit within which the Secretary General had to make a new decision so as to comply with order 2. However in the absence of a specified time limit, a necessary implication of the order was that it had to be done within a reasonable time (see Judgment 1812, consideration 4). Indeed this appears to be accepted by the Federation, which argues in its reply that the Secretary General issued "a new final decision, in a reasonable amount of time". The Tribunal does not agree. There is presently no basis for doubting that in this case the

original impugned decision did not involve an entirely arbitrary exercise of power but rather was a considered and rational response to the conclusions and recommendations of the Panel. Thus the Secretary General's task to comply with the order was simply to articulate the reasons he failed to articulate in the impugned decision. That should not have taken over six months. Accordingly the complainant is entitled to moral damages for the delay in complying with the earlier order (see, for example, Judgment 1427, consideration 10), which the Tribunal assesses in the sum of 5,000 Swiss francs.

DECISION

For the above reasons,

1. The Federation shall pay the complainant 5,000 Swiss francs in moral damages within 30 days of the public delivery of this judgment.
2. The Federation shall pay the complainant 3,000 Swiss francs in costs within 30 days of the public delivery of this judgment.
3. Interest shall accrue at the rate of 5 per cent per annum on the above amounts for any period in which the amounts required to be paid by orders 1 and 2 remain unpaid after 30 days from the public delivery of this judgment.

In witness of this judgment, adopted on 26 October 2015, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ