

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**T. B. (No. 4)**

**v.**

**WHO**

(Application for interpretation and execution)

**129th Session**

**Judgment No. 4235**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation and execution of Judgment 4093, filed by Mr J. T. B. on 11 April 2019, the reply of the World Health Organization (WHO) of 24 May and the scanned letter of 10 July 2019 by which the complainant informed the Registrar of the Tribunal that he did not wish to file a rejoinder;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

#### CONSIDERATIONS

1. In Judgment 3689, delivered in public on 6 July 2016 on the complainant's fourth complaint, having noted, among other matters, that the complainant had been exposed to a considerable risk of contracting onchocerciasis when he had been employed by WHO as a blackfly collector, the Tribunal held that "his ocular disorder must be regarded as attributable to the Organization". Under point 2 of the decision in that judgment, the Tribunal therefore ordered WHO to pay the complainant the sums due to him by virtue of his financial entitlements as indicated in consideration 4, stating that these sums

were to be paid “with interest as specified in that same consideration”. The latter read in part as follows:

“[T]he complainant shall be awarded all his entitlements under the WHO rules in force at the date of medical expenses claim, i.e. 5 August 1994, and he shall be paid the corresponding amounts within 90 days of the delivery of this judgment, failing which they will bear interest at the rate of 5 per cent per annum from the date of the delivery of the judgment until the date of their payment.”

2. Whereas the compensation of 30,000 United States dollars for moral injury which WHO was also ordered to pay to the complainant pursuant to Judgment 3689 was paid in August 2016, the abovementioned sums were not paid until April and May 2017, that is to say well beyond the 90-day time limit set in the judgment.

3. The Organization did not, however, spontaneously pay interest on those sums, as provided for in Judgment 3689 in the event that the time limit in question was exceeded, and the complainant therefore filed an application for execution of that judgment with the Tribunal.

4. When it ruled on that application in Judgment 4093, delivered in public on 6 February 2019, the Tribunal rejected WHO’s reasons for not paying the interest in question and accordingly ordered the Organization to rectify that omission. The decision in that judgment read as follows:

“WHO shall pay the complainant, in accordance with point 2 of the decision in Judgment 3689, interest at a rate of 5 per cent per annum on the sums due by virtue of his entitlements as indicated in consideration 4 of that judgment that were not paid to him within 90 days of the public delivery of Judgment 3689. Such interest shall accrue, for each of these sums, from the date of the public delivery of the said judgment until the date of their payment.”

5. On 28 February 2019 the complainant received from WHO a draft calculation of the interest owing to him pursuant to Judgment 4093, which set the total amount at 6,222,816 African Financial Community (CFA) francs. However, the complainant rightly pointed out to WHO that its calculation was incorrect, because it had taken as the starting point for the accrual of interest the date of 6 October 2016, evidently considering that this date marked the end of the 90-day period following

the public delivery of Judgment 3689 in which the principal sums due were to be paid, rather than the date of the public delivery itself, that is, 6 July 2016, as expressly provided for in the judgment.

6. On 25 March 2019 WHO sent the complainant a new draft calculation of the interest in question, which set the date on which interest started to accrue at 6 July 2016 and, in addition, unlike the initial draft, provided for payment of interest on that interest, which brought the total amount to 10,524,559 CFA francs.

7. The complainant considers that that sum, paid to him on 28 March 2019, still did not correspond to all the interest to which he was entitled, and in this application he requests that the Tribunal interpret the decision in Judgment 4093, which, in his view, is necessary to ensure that WHO will execute that judgment in full.

8. According to the Tribunal's case law, an application for interpretation is receivable only if the meaning of the judgment concerned is uncertain or ambiguous to such an extent that the judgment cannot be executed (see, for example, Judgments 1306, consideration 2, 3014, consideration 3, 3271, consideration 4, and 3822, consideration 5).

9. It should also be recalled that the Tribunal's judgments, which, under Article VI of its Statute, are "final and without appeal" and which, furthermore, have *res judicata* authority, are immediately operative (see, for example, Judgments 3003, consideration 12, and 3152, consideration 11). As they may not later be called into question except when an application for review is allowed, they must be executed by the parties as ruled (see, for example, Judgments 3566, consideration 6, 3635, consideration 4, and above-mentioned 3822, consideration 9).

10. In support of his application for interpretation and execution, the complainant submits that WHO has applied the 5 per cent interest rate incorrectly in that it has not "systematically applied [that rate] to the entitlements indicated" in Judgment 3689, essentially due to an error in determining the end of the period for which interest accrues. In

his view, it follows from the decision in Judgment 4093 that the interest owed to him by WHO does not accrue only until the date of payment of the sums corresponding to his “initial monetary entitlements” – that is, the principal sums owed – but until the date on which the interest on those sums is paid. This claim is reflected in a draft calculation submitted by the complainant to the Organization, which results in a total amount of interest of 31,910,516.50 CFA francs.

11. However, the complainant’s argument is clearly without merit. Indeed, it is clear from the terms, cited above, of the two judgments at issue that “the sums due by virtue of his entitlements as indicated in consideration 4 [of] [J]udgment [3689]” to which the decision in Judgment 4093 refers – thereby echoing the wording of point 2 of the decision in Judgment 3689 – are those corresponding to “all [the complainant’s] entitlements under the WHO rules in force at the date of medical expenses claim, i.e. 5 August 1994”. Under the decision in Judgment 4093 – which again reiterates the provisions of point 2 of the decision and consideration 4 in Judgment 3689 – it is those sums that are to bear the interest owed by the Organization, and it was explicitly provided that “[s]uch interest shall accrue, for each of these sums, [...] until the date of their payment”. There is hence no reason to consider that the interest in question should have continued to accrue after the date of payment of the said sums, as the complainant submits, until the interest itself was paid.

12. In this case, it is not disputed that the principal sums owed, which included the accumulated retroactive payments of an invalidity pension, compensation for permanent loss of function and reimbursement of medical and travel expenses, were, as the Organization states, paid to the complainant variously on 6 April, 11 April and 23 May 2017. WHO hence correctly considered that the interest on the various sums concerned had ceased to accrue on the dates on which they were respectively paid. Moreover, an examination of the final calculation of that interest drawn up by the Organization, details of which are included in the file, shows that no calculation errors were committed.

13. In the light of the foregoing, the Tribunal considers that the meaning of Judgment 4093 was not uncertain or ambiguous to such an extent that the execution thereof was impossible. In line with the case law recalled under 8, above, it follows that the complainant's application must be dismissed as irreceivable to the extent that it seeks the interpretation of that judgment.

14. Furthermore, it also ensues from the above that the said judgment has been executed in full by WHO. Accordingly, the complainant's application must be dismissed as groundless to the extent that it is directed at its execution.

15. The Tribunal notes, moreover, that the Organization has granted the complainant a benefit above and beyond his entitlements under Judgments 3689 and 4093 by paying him interest on the interest which was owed to him pursuant to those judgments. Indeed, as the case law shows, the Tribunal awards simple interest as a rule; it awards compound interest only in exceptional circumstances, in which case it explicitly states so in the decision of the judgment concerned (see Judgment 802, consideration 4, or, more recently, Judgment 3013, consideration 3). The judgments at issue in this case did not provide for compound interest to be paid. In the particular circumstances of this case, the Tribunal considers, however, that the payment to the complainant of interest of that kind is a benefit granted to him by the Organization on an *ex gratia* basis which he is therefore entitled to keep.

#### DECISION

For the above reasons,

The application for interpretation and execution is dismissed.

In witness of this judgment, adopted on 11 November 2019, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

*(Signed)*

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ