

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

B.

v.

ICC

(Application for execution)

130th Session

Judgment No. 4294

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3905 filed by Mr M. B. on 11 June 2019, the reply of the International Criminal Court (ICC) dated 13 December 2019, the complainant's rejoinder of 5 February 2020 and the ICC's surrejoinder of 14 April 2020;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant applies for execution of Judgment 3905 delivered in public on 24 January 2018. The following is a summary of the facts relevant to the application. Pursuant to the "Principles and Procedures Applicable to Decisions Arising from the *ReVision* Project", on 16 June 2015, the Registrar of the ICC informed the complainant of the decision to abolish his post and that his fixed-term appointment would terminate on 14 October 2015. On 7 September 2015, the complainant filed a request for review of the decision to terminate his appointment which, according to him, had been communicated to him on 26 August 2015. On 9 October 2015, the Registrar rejected the request for review as irreceivable for failure to file the request within thirty days of the 16 June 2015 notification of the decision to terminate his appointment.

2. The complainant filed an internal appeal in which he maintained that the challenge to the termination of his appointment was receivable and the decision to terminate his appointment was unlawful. In its 22 February 2016 report, the Appeals Board found that the complainant had not filed a request for review within thirty days of the 16 June notification of the decision as required in Staff Rule 111.1(b), therefore, it was not competent to consider the merits of the appeal and recommended the dismissal of the appeal as irreceivable. On 23 March 2016, the Registrar endorsed the findings and recommendation of the Appeals Board and dismissed the appeal as irreceivable. This is the decision that was impugned in the proceedings leading to Judgment 3905.

3. In Judgment 3905, the Tribunal set aside the Registrar's 23 March 2016 decision and awarded the complainant moral damages in the amount of 20,000 euros and costs in the amount of 4,000 euros. Relevantly, at point 2 of the decision, the Tribunal ordered:

“2. The case is remitted to the ICC for consideration in accordance with consideration 18, above.”

In consideration 18, the Tribunal observed that:

“[...] Given the perceived clarity of the communication of the ‘decision’, the Appeals Board did not consider whether there were exceptional circumstances beyond the complainant’s control warranting a waiver of the thirty-day time limit as it was mandated to do by Staff Rule 111.3(b) and concluded that the appeal was irreceivable. As the Registrar in making his decision adopted the Appeals Board’s findings and conclusions and accepted its recommendation, that decision is tainted by the Appeals Board’s errors of fact and law and will be set aside.”

Accordingly, in consideration 18, the Tribunal concluded that:

“[...] [t]here were clearly grounds on which a conclusion could be reached that there were exceptional circumstances and the Appeals Board should have waived compliance with the time limits and considered the appeal on the merits. The case will be remitted to the ICC for that purpose. [...]” (Emphasis added.)

On 21 February 2018, the Registrar remitted the complainant’s case to the Appeals Board to “hear the merits of the Appeal”.

4. In the present application, the complainant takes the position that point 2 of the decision was not properly executed. First, citing Judgment 1892, consideration 4, the complainant submits that when

a case is remitted to an organization for a new determination, the procedure is to be resumed from where it went astray and became unlawful. The complainant argues that the “initial unlawful ruling” that led to Judgment 3905 was the Registrar’s 9 October 2015 review decision rejecting his request for review as irreceivable. The complainant maintains that the remittal of his case to the ICC required that the Registrar issue a new review decision and not a new recommendation from the Appeals Board.

5. The parties agree that the Tribunal’s reasoning in Judgment 1892, consideration 4, is applicable to the present case. It states:

“As to the claims relating to the failure to execute the judgment sending the case back to the Organisation for a new ruling on his appeal, they too must be disallowed because the matter was referred back to the [appeal body] within a reasonable time. The [appeal body] met on 23 March 1999 and issued a negative recommendation on 21 April 1999. The Director General endorsed it, dismissing the appeal on 5 May 1999. The procedure necessitated by the judgment quashing the original decision was therefore implemented swiftly. As the Organisation emphasises, it was appropriate to resume the procedure by referring the matter back to the [appeal body] because it was the unlawful nature of the latter’s opinion that led to the quashing of the decision.” (Emphasis added.)

6. At the outset, it is observed that contrary to the complainant’s assertion it was not the Registrar’s 9 October 2015 review decision that led to the decision in Judgment 3905 to set aside the Registrar’s 23 March 2016 decision. As the Tribunal found in consideration 18, it was the Appeals Board’s errors of fact and law in its findings and conclusions that tainted the latter decision and, for this reason, it was set aside. The Tribunal also found that there were grounds on which it could be concluded that there were exceptional circumstances beyond the complainant’s control and the Appeals Board should have waived compliance with the time limits and considered the appeal on the merits. Relevantly, the Tribunal added that “[t]he case will be remitted to the ICC for that purpose”. Thus, there could be no doubt that the decision to remit the case to the ICC was for the Appeals Board to consider the merits of the case. It follows that the 21 February 2018 referral of the complainant’s case to the Appeals Board for consideration of the merits of the case properly executed point 2 of the Tribunal’s decision.

7. While maintaining the position that the case should have been referred to the Registrar for a new review decision, the complainant asserts that the proper execution of the Tribunal's order obliged the ICC to consult with him prior to referring his appeal to the Appeals Board regarding his reinstatement in his former position or finding him another position within the ICC fitting his experience and qualifications. This assertion is rejected. The Tribunal did not require the ICC to consult with complainant as part of the execution of point 2 of the decision in Judgment 3905. Moreover, as the ICC submits, an obligation to consult cannot be reasonably inferred from the general principle in the case law that "the parties must work together in good faith" to execute the Tribunal's judgments (see, for example, Judgment 3656, consideration 3). As the ICC points out, the Tribunal has on many occasions in relation to applications for execution stated that if it intended that certain steps should be taken as part of the execution of a decision, this would be stated in the decision.

8. Based on his position that the Tribunal's order required the issuance of a new review decision, the complainant contends that the order has not been executed since the public delivery of the judgment. Thus, in his view, the referral of the appeal to the Appeals Board "delayed the execution of Judgment 3905 by one year and a half, at the time of the filing of the present brief". This contention is rejected. The decision in point 2 was properly executed within one month of the public delivery of Judgment 3905 on 24 January 2018.

9. The complainant made submissions concerning the settlement negotiations between the parties. These submissions are beyond the scope of the application for execution and will not be considered.

10. Lastly, the complainant's renewed request for the joinder of the present application for execution and his second complaint filed with the Tribunal on 11 June 2019, endorsed by the ICC, is rejected, as the application for execution does not raise the same issues of fact and law as the second complaint.

11. The application for execution will be dismissed.

DECISION

For the above reasons,

The application for execution is dismissed.

In witness of this judgment, adopted on 9 July 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ