SEVENTY-EIGHTH SESSION

In re JIBAJA (No. 2) and ROTA (No. 2)

(Application for execution)

Judgment 1410

THE ADMINISTRATIVE TRIBUNAL,

Considering the common application filed by Miss Cecilia Jibaja and Mrs. Adriana Rota on 6 January 1994 for the execution of Judgment 1280, the reply of 16 May from the World Health Organization (WHO), the complainants' rejoinder of 10 June and the WHO's surrejoinder of 19 July 1994;

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

Having examined the written submissions;

CONSIDERATIONS:

1. This application arises out of Judgment 1280 of 14 July 1993. In the common complaint on which the Tribunal ruled in that judgment the complainants challenged new salary scales applicable to staff, like themselves, in the General Service category. The Director of the World Health Organization's Regional Office for the Americas (AMRO), which is in Washington D.C., had issued the scales on 11 February 1991, with effect from 1 August 1990, after the Local Salary Survey Committee had carried out a comprehensive survey of salaries in Washington in the second half of 1990. The Tribunal set aside the impugned decision of 22 January 1992 and sent the case back to the Director-General of the Organization for a new decision on the salary scales to be taken in the light of the judgment.

2. The Tribunal found two flaws in the application of the approved methodology of the International Civil Service Commission and of the Manual of the Consultative Committee on Administrative Questions. One flaw - the reasoning is in Judgment 1280 under 27 - was the unwarranted replacement of Fairfax County Government with the Organization for Personnel Management in choosing the five employers to be retained for the purpose of the survey. On that score no further point arises. The other flaw related to the reckoning of hours of work in carrying out the survey. As the judgment said under 32, the complainants contended that since the methodology referred to "hours worked" the comparison must relate to hours actually worked. As was said in 31, the Local Salary Survey Committee stated in its report of November 1990 that the data obtained from the five employers retained were calculated on the basis of a standard 40-hour working week, but that in the three international organisations retained the "official" working week, though stated to be 40 hours, included a one-hour break for lunch in each 8-hour day; so the number of working hours in the week was 37; yet no adjustment to salaries had been made on that account. The Organization having failed to answer the plea specifically, the Tribunal took the statement by the Local Salary Survey Committee at its face value and held that, since the Organization had failed to adjust salaries paid by the comparator employers to allow for the differences in hours worked, the complainants' argument succeeded.

3. On receipt of the judgment the Organization ascertained from the Inter-American Development Bank and the World Bank, who were among the comparator employers, that the hours actually worked there were 40 a week. The correspondence with those organisations makes it clear that there is not, as the Local Salary Survey Committee stated, a one-hour break for lunch each day. In so informing the Committee the WHO said that if the Committee could prove that the hours worked were 37 a week in either of those two institutions it would reconsider the calculations accordingly. The Committee did not take up the offer.

4. Though the Committee met six times to discuss execution of the judgment its members could not agree. The staff representatives took the view that the Tribunal's intention was that the data as contained in the Committee's report of November 1990 should be applied without being put in question. The Administration's representatives thought that since the calculations agreed on by the Committee and submitted in its report of November 1990 were

based on a 40-hour week at the Inter-American Development Bank and the World Bank "a more detailed explanation of the position of the Administration representatives was not included".

5. Now that the statement that there is an official one-hour break for lunch has been challenged the complainants have produced no evidence to prove it. Yet they want that inaccurate statement to serve as the basis for new salary scales on the grounds that the matter is res judicata and cannot be reopened.

6. What the Tribunal intended was that, as is provided in the Manual at step C.5.1, only the "hours actually worked" should count and they should be the hours for which staff members were paid to work. Seen in the context of this case its intention was that if there was an official one-hour break for lunch each day it should be removed from the reckoning of the working day: it did not mean that unofficial breaks should be deducted. The Tribunal having quashed the impugned decisions and sent the case back, the Director-General's duty was to take the new decision in accordance with the methodology and the Manual. In doing so, however, he was entitled to ensure that he was relying on accurate information. Having ascertained that the actual working week was 40 hours, he made his decision by taking into account the hours actually worked, he thus complied with the Tribunal's ruling, and the doctrine of res judicata does not apply.

7. In the context of its reply to the complainants' application for execution the Organization makes its own application for review of the judgment. Its application is refused. It should properly have filed a separate application, not sought review in the context of its reply.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.