

EIGHTY-SIXTH SESSION

***In re* Julien Urzúa (No.2)**

(Application for interpretation and execution)

Judgment 1813

The Administrative Tribunal,

Considering the application filed by Mr. Rubén Julien Urzúa on 5 November 1997 for the interpretation and execution of Judgment 1616, the reply of 10 January 1998 by the European Southern Observatory (ESO), the complainant's rejoinder of 23 January and the Observatory's surrejoinder of 17 February 1998;

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

Having examined the written submissions;

CONSIDERATIONS

1. By Judgment 1616 of 30 January 1997 the Tribunal set aside decisions by the Director General of the European Southern Observatory refusing Mr. Julien Urzúa and three other former staff reinstatement in their employment. Its decision read:

"1. The Director General's decisions dated 15 December 1995 and those of 15 September 1995 on the cases of the four complainants are set aside.

2. The cases are sent back to the Director General for due decisions on the appeals.

3. The Observatory shall pay them the awards as set out in 8 and 9 [of Judgment 1616].

4. It shall pay each of them 1,000 dollars in costs.

5. Their other claims are dismissed."

And 8 and 9 of that judgment said:

"8. ... The complainants are ... entitled, not to the reinstatement they claim, but merely to review of their status. They are further entitled to awards of damages in amounts equivalent to what they would have earned from 15 September 1995 up to the dates at which decisions are duly taken on their appeals, less any indemnities the ESO may already have paid them.

9. For Mr. Julien Urzúa, who reached the age of retirement on 20 September 1996, the amount of damages shall be equivalent to what he would have earned up to that date. Moreover, there is no merit in his claim to further terminal entitlements on the strength of the contract that he signed in 1967 and that was governed by the law of Chile: the applicable law under the terms of his appointment as amended in 1972 is the ESO's own rules, and those are the rules that have been applied to him."

2. The complainant is challenging the construction the ESO has put on those passages and on point 2 and he wants execution of the texts by his own lights. He argues that point 2 required of the Director General a "due decision" on his appeal; the judgment awarded him damages equivalent to what he would have earned from 15 September 1995 up to the date at which he retired; he is entitled to a further award of damages for material and moral injury attributable to the "illegitimate tardiness" of execution; and the Observatory may not subtract any indemnities he got, the phrase "less any indemnities the ESO may already have paid" being in 8, whereas there is nothing to that effect in 9, which is about his own case.

3. The ESO asks the Tribunal to dismiss his application on the grounds that the full amount of damages awarded in the judgment is the equivalent of his earnings from 15 September 1995 to 20 September 1996, the date at which he started retirement, that the sums it paid him in termination indemnities in September 1995 were larger and that it has therefore executed the judgment.

4. Judgment 1616 is clear enough. Point 2 is irrelevant to Mr. Julien Urzúa's case since by 30 January 1997, the date of the judgment, he had begun retirement and his appointment had therefore come to an end. He claims the payment of his earnings from 15 September 1995 up to the date at which he began retirement. But the judgment does not award him any earnings. It refers to earnings only for the purpose of determining the amount of damages: what 9 means is that the amount is to be reckoned according to what he would have earned. For that purpose the Observatory had to take the figure of his earnings from 15 September 1995 up to the date of retirement and add any allowances due under the Staff Regulations, but dock the amount by any indemnities already paid.

5. The ESO has paid him more than the judgment required and has duly discharged its obligations thereunder. So none of his claims can succeed.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 18 November 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

(Signed)

Michel Gentot

Julio Barberis

Jean-François Egli

A.B. Gardner