

EIGHTY-EIGHTH SESSION

In re Abdul-Quader

(Application for interpretation and execution)

Judgment 1920

The Administrative Tribunal,

Considering the application for interpretation and execution of Judgment 1629 (*in re* Schopper) filed by Mr Abu Saleh Abdul-Quader on 20 January 1999, the reply of 9 April from the World Health Organization (WHO), the complainant's rejoinder of 4 June and the WHO's surrejoinder of 30 July 1999;

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

Having examined the written submissions;

CONSIDERATIONS

1. This is an application for interpretation and execution of Judgment 1629. The complainant was an intervener in that case and, having been found to be in the same position in law and in fact as Miss Schopper, was entitled to benefit from that judgment, save as to costs.
2. The complainant alleges unjustifiable delay in the execution of Judgment 1629. Like Miss Schopper and Mr Friel (in Judgments 1904 and 1905 of this day) he claims that he, too, was entitled to payment of contributions by the WHO to the United Nations Joint Staff Pension Fund and the Staff Health Insurance. Like Mr Friel, he claims that compensation should be paid to him for the loss of home leave.
3. The question of excessive delay was raised in Judgment 1797 (*in re* Weiss No. 2). The reduction-in-force procedure and reassignment exercise following Judgments 1624 to 1631 were considered by the Tribunal which held under 11 that it was satisfied that the Organization acted with reasonable speed in carrying out the large exercise called for by the judgments relating to staff of the Global Programme on Aids (GPA).
4. In Mr Weiss's case, that complainant was informed on 16 April 1998 that he could not be reinstated and would get an award of damages instead. He was sent a detailed reckoning of damages on 15 June and on 13 July 1998 the amount was paid into his account with interest. The Tribunal held that he was compensated by the payment of interest and no further compensation was due on the grounds of delay.
5. In the present case, the complainant was told on 15 April 1998 that he would not be reinstated and would get an award of damages. He was asked to supply details of any indemnity or earnings with appropriate documentation. On 11 May 1998 he supplied some details but was requested on 1 July 1998 to supply copies of all pay slips showing dates, periods and amounts, not just a cumulative total. He was asked for original school bills and evidence of payment of those bills and his rent bills. He replied on 31 August 1998 and, after a request for further clarification on 28 October he supplied additional documentation on 23 November 1998.
6. The complainant's counsel wrote to the WHO on 31 December 1998 and again on 8 January 1999 asking for a statement of the amount to be paid to the complainant. In the absence of a reply this complaint was filed on 20 January 1999.
7. A letter was sent to the complainant on 10 February 1999 stating the amounts to be paid and requesting information on the mode of payment. Having received this information on 19 February, instructions for payment were issued on 26 February and the money was paid on 5 March 1999.
8. The delay in paying the complainant was much longer than for Mr Weiss, but the complainant did not supply all the information at the start and had to be requested more than once to produce documents. The

delay was not all on the Organization's side.

9. In his rejoinder the complainant drops his claim for relief relating to the delay but asks the Tribunal to conclude he was justified in initiating the present complaint. He maintains his claim to costs under this head.

10. In the circumstances, the Tribunal considers that the WHO's delay in replying to the complainant's letter of 23 November 1998, despite reminders of 31 December 1998 and 8 January 1999, did provide justification for filing the complaint on 20 January. Even though there is no question of further compensation the complainant is entitled to a sum for costs.

11. For the reasons set out in Judgment 1904 (*in re* Schopper No. 2) the complainant fails in his claim to be entitled to payment of contributions by the Organization to the Pension Fund and Staff Health Insurance.

12. The complainant suggests that the arguments advanced in his case are different from those in the case of Mr Weiss. He asks that the issues discussed be examined *ab initio*. He claims that Judgment 1629 required the Organization to treat the complainant - an intervener - as remaining in service until the reduction-in-force procedure was completed. This entailed paying contributions to the Pension Fund and Staff Health Insurance until that period expired.

13. The complainant is mistaken. The arguments may differ but the principle is the same. Judgment 1629 gave the option to the Organization either to reinstate or to pay damages. Where damages were paid there was no reinstatement and therefore no question of paying the claimed contributions.

14. The complainant asks the Tribunal to give the option to the Organization to find an alternative solution regarding the payment of health insurance. The Tribunal holds that there are no grounds for allowing this request.

15. In relation to home leave entitlement, the complainant says he went on home leave in December 1994 and would have been entitled again in December 1996. He says that he did in fact travel for home leave purposes in December 1995-January 1996 and in December 1996-January 1997. He claims one set of travel costs.

16. The Organization paid for his home leave in 1994-1995 and says that the earliest possible time for his next leave, if he had been a staff member, would have been December 1996. However, since he was separated on 31 May 1996 he was not entitled to home leave after that date.

17. The Tribunal accepts this and the claim fails.

18. The complainant claims 3,000 Swiss francs in costs. The Tribunal awards him a partial payment of 1,500 francs.

DECISION

For the above reasons,

1. The complainant is entitled to 1,500 Swiss francs in costs.

2. All his other claims are dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

Michel Gentot
Mella Carroll
James K. Hugessen

Catherine Comtet

