

NINETY-NINTH SESSION

(Application for execution)

Judgment No. 2429

The Administrative Tribunal,

Considering the application for execution of Judgment 2208 filed by Mrs P.E.C. on 24 February 2004 and corrected on 19 April, the reply of the United Nations Industrial Development Organization (UNIDO) of 9 August, the complainant's rejoinder of 29 September 2004 and UNIDO's surrejoinder of 12 January 2005;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case are given in Judgment 2208, delivered on 3 February 2003, concerning the complainant's first complaint. In that judgment the Tribunal sent the case back to the Director-General of UNIDO for implementation of the internal appeal procedure and ordered the Organization to pay the complainant 1,500 euros in costs.

On 10 March 2003 the Human Resource Management Branch asked the UNIDO Representative in Cameroon to ensure that the complainant received a letter of the same date from the Director of the Branch informing her that the Organization "ha[d] instructed" the United Nations Development Programme (UNDP) to pay her 1,500 euros in costs and that it "ha[d] forwarded" her appeal to the Joint Appeals Board. The instruction was in fact given to UNDP and the appeal forwarded to the Board on 11 March. On 6 May the Director sent the Board the Administration's reply to the complainant's appeal. The Organization explains that the Secretary of the Board sent this document to the complainant in May 2003 but that it was returned. The latter filed her application for execution on 24 February 2004.

B. The complainant recalls that the Tribunal's judgments are final and without appeal and that the Director-General of UNIDO has no discretion in that respect. She accuses the defendant of having failed to execute Judgment 2208 and of acting in bad faith. She maintains that the defendant failed to react despite her many solicitations and reminders.

In addition to the execution of Judgment 2208, the complainant, considering that she was "unfairly dismissed", asks the Tribunal to quash the decision of 23 May 2000 not to extend her fixed-term appointment – which she challenged in her first complaint – and to award her the compensation of 117,108,000 CFA francs that she claimed in her initial complaint and the costs of the current proceedings.

C. In its reply UNIDO raises the question of receivability while recognising that it is "not generally a relevant issue" in the case of an application for execution.

On the merits, the Organization contends that it did in fact execute Judgment 2208, since it paid costs, forwarded the complainant's appeal to the Joint Appeals Board and kept the complainant informed of all actions taken. At no time, it submits, did either the Administration or the Board lead the complainant to believe that the internal appeal procedure would not be completed. It adds that the Board should be considering the case "shortly". It points out that the documents annexed by the complainant to her brief as examples of UNIDO's lack of response either were not addressed to the latter, or were addressed to it but under a wrong fax number, or were addressed to UNIDO's Representative in Cameroon, who has stated that she never received any. It therefore rejects the complainant's accusations that it did not reply to her letters. It accuses her, moreover, of having disregarded whatever information and advice she was offered, of having failed to contact the Secretary of the Joint Appeals Board and of attempting now to by-pass the internal appeal procedure by asking the Tribunal to rule on the merits before obtaining a final decision by the Director-General.

D. In her rejoinder the complainant argues that the Tribunal does not require that internal remedies be exhausted as a condition for filing an application for execution and that the only reason why UNIDO raises that point is to delay the settlement of the dispute. She notes that more than one year and four months after she filed her appeal the Joint Appeals Board has still not dealt with it.

The complainant maintains that she never received the letter of 10 March 2003 which the Representative of UNIDO in Cameroon – the person involved in the first complaint – should have given her. She asserts that the defendant is unable to produce a receipt for that letter bearing her signature and she accuses the Representative of having kept the letter, instead of handing it over as instructed, and of having fabricated false evidence to prove otherwise. She also makes the point that in the letter concerned the Director of the Human Resource Management Branch stated that the Organization had forwarded the appeal to the Joint Appeals Board, whereas it did so in fact only on the following day, and she expresses surprise at the lack of precision regarding both the date of the Administration's reply to her appeal and the address to which it was sent. She concludes from this that she was never "informed of the internal procedure initiated without her knowledge". In this respect, she criticises the Director-General for having failed to consider her written protest objecting to the "wrongful termination of her contract" and for having instead initiated the appeal procedure by forwarding her protest directly to the Joint Appeals Committee.

Lastly, the complainant accuses the Director-General of having "withdrawn behind a wall of silence" and the Organization of acting in bad faith in denying ever having received her correspondence.

E. In its surrejoinder UNIDO informs the Tribunal that the Joint Appeals Board concluded, in its report dated 19 November 2004, that the complainant's appeal should be dismissed and that the Director-General, in a memorandum of 1 December, decided to follow that recommendation. The internal appeal procedure was therefore duly concluded and Judgment 2208 fully executed.

It reiterates its arguments and considers the accusations made in the rejoinder as "regrettable and baseless".

CONSIDERATIONS

1. On 16 June 2000 the complainant had sent a written protest to the acting Chief of the Office of Legal Affairs of UNIDO objecting to the "wrongful termination of her contract". In Judgment 2208, the Tribunal sent the case back to the Director-General for implementation of the internal appeal procedure and awarded the complainant 1,500 euros in costs.

2. In her application of 24 February 2004 the complainant asks the Tribunal to order the execution of Judgment 2208, to set aside a "decision of 23 May 2003 [*recte* 2000]" (by which the Organization had informed her that her contract would not be renewed), and to award her compensation for moral and material injury and costs.

3. Appeals are dealt with in Chapter XII of the Staff Rules of the Organization (Rules 112.01 to 112.03). The details of the procedure are provided in Appendix K to the Rules.

According to these provisions, an administrative decision may be challenged by filing an appeal with the Joint Appeals Board, in particular for non-observance of terms of appointment. Each appeal is considered by one of the Board's panels. Within one month of the date on which the consideration of an appeal has been completed, the Panel adopts and submits a report to the Director-General. Within one month after the Panel has forwarded its report the final decision on the appeal must be taken by the Director-General. If no decision has been taken within one month, the staff member concerned may obtain the report in order to exercise his right to make application to the Administrative Tribunal.

4. By the time the complainant filed her application for execution, the Director of the Human Resource Management Branch had forwarded the protest of 16 June 2000 in the form of an appeal to the Joint Appeals Board in execution of Judgment 2208.

On 19 November 2004 the Board issued its report, which concluded that the complainant's claims that her contract was wrongfully terminated and that its non-renewal was unlawful were unfounded. On 1 December 2004 the Director-General decided to accept the conclusions of the report and to dismiss the appeal. The complainant was

informed of that decision by registered mail on 14 December 2004.

This means that Judgment 2208 has been executed.

The claim for execution is therefore redundant. Furthermore, the claim related to the quashing of the decision of 23 May 2000 cannot be dealt with in the context of the present proceedings.

5. It would not be appropriate to award costs to the complainant since the procedure for the execution of Judgment 2208 was following its normal course at the time she filed her application for execution.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 28 April 2005, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet