

110th Session

Judgment No. 2988

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr J. R. D. against the World Health Organization (WHO) on 14 May 2009, which is an application for execution of Judgment 2786, WHO's reply of 7 September, the complainant's rejoinder of 10 October 2009, the Organization's surrejoinder of 15 January 2010, the complainant's additional submissions of 15 June and WHO's final comments thereon of 20 September 2010;

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 may be found in Judgment 2786, delivered on 4 February 2009, on the complainant's first complaint. Suffice it to recall that by a decision of 30 April 2003 the Regional Director of the Organization's Regional Office for South-East Asia dismissed the complainant for misconduct with effect from 8 May 2003. The complainant lodged an appeal with the Regional Board

of Appeal, which recommended that the decision to dismiss him be quashed, that he be reinstated and that other consequential relief be granted, but the Regional Director rejected that recommendation on 17 August 2004. Following an unsuccessful appeal to the Headquarters Board of Appeal and a further investigation by the Office of Internal Oversight Services, the complainant was informed on 4 January 2008 of the Director-General's decision to reject his appeal in its entirety and to confirm his dismissal. In Judgment 2786 the Tribunal set aside that decision, as well as the decisions of 30 April 2003 and 17 August 2004, and ordered WHO to pay the complainant his salary and other entitlements for the period from 8 May 2003 until the expiry of his then current contract, together with any indemnity or other allowance that would then have been payable by reason of the non-renewal of his contract, with interest at the rate of 8 per cent per annum from the date of expiry of his contract until the date of payment. In addition, the Tribunal awarded him 5,000 United States dollars in material damages, 3,000 dollars in moral damages and 500 dollars in costs, and it ordered WHO to pay him the sum of 49,240 Indian rupees in respect of the health insurance claim made concerning his son, together with interest at the rate of 8 per cent per annum from 1 December 2002 until the date of payment.

On 3 March 2009 the Organization paid the complainant the sum of 8,500 dollars, corresponding to the above-mentioned damages and costs. The following day it paid him the sum of 164,793.29 rupees, indicating that this payment included his salary for May and June 2003, salary arrears resulting from the introduction of a revised salary scale effective 1 May 2003, one month's salary in lieu of notice, an amount corresponding to the balance of his annual leave entitlement, interest on unpaid salary, 49,240 rupees due in respect of the insurance claim, and interest on that sum.

By letter of 20 March 2009 the complainant acknowledged receipt of these payments but claimed to be entitled to further sums, namely an end-of-service grant amounting to 12 months' salary plus interest, a further two months' salary in lieu of notice, pension contributions for May and June 2003 and interest on the amounts paid to him in lieu of

notice and for annual leave, respectively. He also asked to be paid compound interest, rather than simple interest, on all the amounts paid pursuant to Judgment 2786 and he requested details of his annual leave balance and of the deductions that had been made. The Regional Personnel Officer informed the complainant on 25 March that his claims were under review. On 11 May 2009 the complainant filed his application for execution with the Tribunal.

In a letter of 19 June 2009 the Director of Administration and Finance apologised to the complainant for the delay in processing his claims and told him that he had instructed his staff to deal with them as a matter of urgency. On 24 June the Organization paid the complainant the sum of 412,548.38 rupees, which comprised the following: an end-of-service grant equivalent to 12 months' salary, a further two months' salary in lieu of notice, reimbursement of the pension contributions deducted from his salary for June 2003 and from his salary arrears for May 2003, reimbursement of Group Life Insurance premiums deducted from his salary, and interest on all these amounts.

The complainant acknowledged receipt of this payment on 15 July 2009 and requested details of some of the calculations that had been made as well as a statement of all the sums due to him. This information was sent to him on 18 August by the Regional Personnel Officer, who invited him to confirm that Judgment 2786 had been fully executed and to withdraw his application for execution. She pointed out that his request to be paid compound interest, which he had not claimed during the internal appeal proceedings and which had not been ordered by the Tribunal, could not be met.

The complainant replied on 1 September 2009 that he believed he was still owed the sum of 32,458.24 rupees in respect of his salary for May and June 2003 and the salary paid in lieu of notice. The Regional Personnel Officer rejected this claim by letter of 9 September 2009, stating that the relevant calculations had been rechecked and were found to be correct. She again invited the complainant to withdraw his application for execution, but on 18 September the complainant sent "revised calculations" according to which the sum of 23,158.66 rupees

was outstanding. After a further exchange of correspondence, the Regional Personnel Officer informed him by letter of 12 January 2010 that the Finance Unit had carried out an in-depth review of the matter and had concluded that he was still owed the sum of 285.09 rupees. A detailed statement of the amounts paid to him was enclosed.

The sum of 285.09 rupees was paid to the complainant on 1 February 2010, but on 5 February he sent the Organization another statement of account and claimed that the sum of 27,697.61 rupees remained outstanding. On 11 March the Regional Personnel Officer replied that, after further analysis of his claims, it had been concluded that no other amount was owed to him pursuant to Judgment 2786. Consequently, the Organization considered the case to be finally closed.

B. The complainant states that the difference between the amount claimed by him and the total amount paid by WHO in execution of Judgment 2786 relates to deductions made from his salary for May and June 2003. He points out that he was on duty only from 1 to 7 May. For the period from 8 May to 30 June, when he was no longer actually working, he argues that he should receive “notional salary and allowances” and that, consequently, the Organization ought not to have deducted pension fund contributions, health insurance contributions and life insurance premiums. Indeed, he asserts that he had no insurance cover during that period and that, since the Organization was not actually paying his salary, it could not have been making contributions on his behalf to the pension fund. He also contests the deduction made in respect of his Staff Mutual Fund account. He states that this account has a credit balance and that he has already taken up the matter with the Staff Association.

In the complainant’s view, there is no valid reason for the Organization’s delay in executing Judgment 2786. He asks the Tribunal to order WHO to pay him not only the sums still owed to him, with interest, but also 5,000 dollars in moral damages. He claims costs in the amount of 2,500 dollars.

C. WHO submits that it has executed Judgment 2786 and that the complaint is therefore devoid of merit. It points out that the Tribunal did not specify in that judgment that compulsory deductions should not be made in this particular case. As indicated in the statement that it sent to the complainant, health insurance and accident insurance contributions were mandatory for both May and June 2003. Moreover, the Organization paid the employer's share of his pension fund contribution and Group Life Insurance premium for May 2003, hence the deductions from his May 2003 salary under these heads. It did not, however, make any deduction under these heads for June 2003. Lastly, the sum of 8,312 rupees relating to his Staff Mutual Fund account was deducted from his May 2003 salary on instruction from the Staff Association. It submits that the complexity of the calculations involved in executing the judgment justifies the time taken to finalise all the payments and that the complainant's claim for moral damages should therefore be rejected.

CONSIDERATIONS

1. The complainant applies for execution of the Tribunal's Judgment 2786 delivered on 4 February 2009. He claims he is still owed 27,697.61 Indian rupees for pension and health insurance contributions wrongly deducted from his salary for the months of May and June 2003. He also claims moral damages for WHO's delay in executing the judgment and costs.

2. The Tribunal accepts WHO's submission that the judgment has been fully executed. As the defendant explains, the complainant has failed to take into account the mandatory health insurance and accident insurance contributions for the months of May and June 2003 and the amounts paid to the Staff Association and Staff Mutual Fund. The complainant has also failed to take into account that the pension and Group Life Insurance deductions for the month of May have already been paid to him.

3. With regard to the delay, WHO attributes this to the complexity of the calculations based on old salary scales and data coupled with the transfer of the regional financial administration to a new system. The Tribunal notes that the salary, health insurance claim and interest were paid in a timely fashion one month following the delivery of the judgment. However, WHO's explanation does not account for the failure to pay the 12-month indemnity or the payment of one month's salary in lieu of notice instead of three months, as provided in the Staff Regulations and Staff Rules, until the complainant drew the Administration's attention to the matter. Additionally, it does not explain the three-month delay in payment of these two items once they had been brought to the attention of the Administration.

4. While there is no evidence of bad faith, an organisation has a duty to calculate staff salaries and benefits in accordance with its regulations and rules. This applies equally to the calculation of the amount due for salary and benefits pursuant to a judgment of the Tribunal. In the present case, in calculating the amount owed to the complainant, WHO failed to apply its regulations and rules. This failure, coupled with the delay in the payment of the indemnity and the additional two months' salary in lieu of notice, entitles the complainant to an award of moral damages in the amount of 1,000 United States dollars and costs of 300 dollars.

DECISION

For the above reasons,

1. WHO shall pay the complainant moral damages in the amount of 1,000 United States dollars.
2. It shall also pay him costs in the amount of 300 dollars.
3. All other claims are dismissed.

In witness of this judgment, adopted on 5 November 2010, Ms Mary G. Gaudron, President of the Tribunal, Mr Seydou Ba, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2011.

Mary G. Gaudron
Seydou Ba
Dolores M. Hansen
Catherine Comtet