

**118th Session**

**Judgment No. 3332**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3104 filed by Ms G. C. on 18 June 2012 and corrected on 20 July, the reply of the International Atomic Energy Agency (IAEA) of 29 October, the complainant's rejoinder of 30 November 2012 and the IAEA's surrejoinder of 7 March 2013;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

**CONSIDERATIONS**

1. On 8 February 2012, the Tribunal delivered Judgment 3104 on the complainant's first complaint. It ruled that:

- "1. The impugned decision of 15 October 2009 as well as the previous decision of 27 January 2009 are set aside to the extent that they did not provide a contract extension of two years.
2. The IAEA shall pay the complainant material damages in an amount equivalent to what she would have earned had her contract been extended for two years, including all salaries, allowances, emoluments, entitlements

and pension benefits plus interest at 5 per cent per annum from due dates, less any sums earned by the complainant during that period.

3. The Agency shall pay the complainant moral damages in the amount of 15,000 euros.
4. It shall also pay her costs in the amount of 5,000 euros.
5. All other claims are dismissed.”

2. On 5 May 2011 the complainant was informed by the Secretary of the IAEA Staff Pension Committee that her request for a disability pension, which had initially been rejected, had been granted retroactively to the time of her separation from service on 31 March 2009. The complainant was receiving that pension benefit at the time that the Tribunal delivered Judgment 3104. Although the Tribunal was notified during the proceedings which led to Judgment 3104 that the complainant had applied for a disability pension, it was not informed by either party of the outcome of the Staff Pension Committee proceedings.

3. The complainant in her application for execution requests the Tribunal “to reject the Agency’s interpretation that the award of a disability pension retroactively to [her] date of reinstatement adequately compensates her for the Tribunal’s award of material damages”. The complainant requests that, as the IAEA did not provide her with a calculation of damages, the Tribunal should order payment of a fixed sum of 87,452.94 euros plus interest calculated from March 2012 to the date the award is paid. She also requests the Tribunal to award her 10,000 euros in moral damages “for the delay and lack of good faith shown by the Agency in resolving this matter”, and 3,000 euros in costs. The complainant’s calculation of damages includes 69,705.49 euros for lost salary and emoluments for the period of 18 months, including step increases, 4,063.58 euros for the end-of-service allowance and 13,683.87 euros for the Agency’s share of the pension payments through February 2012, plus interest.

4. According to the Tribunal’s case law, at the stage of execution of a judgment by the parties, and likewise in the context of an

application for execution, the judgment has *res judicata* authority and must be executed as ruled. An exception must be made to this principle when execution proves to be impossible owing to facts of which the Tribunal was unaware when it adopted its judgment (see Judgment 2889, under 6 and 7).

5. In the instant case, in May 2011, the complainant was granted a disability pension retroactively to the time of her separation from service on 31 March 2009. The Tribunal considers that this fact, of which it was unaware when adopting Judgment 3104, makes the full execution of that judgment impossible, as the complainant cannot receive concurrent payments of salary and disability pension. The award of material damages was to compensate for the IAEA's inability to reinstate the complainant, and the granting of a disability pension retroactively to the date of separation from service renders the award of material damages redundant. In the normal course of events, the complainant's disability pension (if granted following the original request) would have made reinstatement impossible. The retroactively granted pension has the same effect. The IAEA notes that by awarding the complainant the disability pension, it would be responsible for paying her a termination indemnity (which it has paid), as well as compensation in lieu of notice.

6. Considering the above, the award of material damages is limited to compensation in lieu of notice in accordance with Staff Regulation 4.02(a) and Staff Rule 4.02.1, plus interest at 5 per cent per annum from 31 March 2009 to the date of final payment. The Tribunal sees no basis for an award of moral damages. The IAEA acted correctly in immediately paying the complainant costs and moral damages, as required by Judgment 3104. The delay in paying the material damages was due to the IAEA seeking clarification regarding the complainant's unique situation and that delay cannot be considered unreasonable or excessive under the circumstances. As the complaint succeeds in part, the complainant will be awarded 1,500 euros in costs.

DECISION

For the above reasons,

1. The IAEA shall pay the complainant compensation in lieu of notice as detailed under consideration 6, above.
2. It shall pay her costs in the amount of 1,500 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 9 May 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

GIUSEPPE BARBAGALLO  
DOLORES M. HANSEN  
HUGH A. RAWLINS  
DRAŽEN PETROVIĆ