

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G.-B. (No. 3)

v.

UNWTO

**DETERMINATION OF MATERIAL DAMAGES
AND CONSEQUENTIAL ORDERS**

135th Session

Judgment No. 4576

THE ADMINISTRATIVE TRIBUNAL,

Considering point 2 of the decision in Judgment 4453 on the third complaint filed by Mr J. G.-B. against the World Tourism Organization (UNWTO), delivered in public on 27 January 2022;

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

Considering the parties' communications dated 11 February, 21 March, 22 April, and 24 June 2022;

CONSIDERATIONS

1. In Judgment 4453, the Tribunal created an opportunity for the parties to further address the question of what would be appropriate material damages payable to the complainant for the unlawful termination of his employment. The Tribunal did so principally because, to use the language in consideration 18 of that judgment, UNWTO had not “come to grips with [the complainant’s] claims [for material damages]”. The complainant did address this question further in communications dated 11 February 2022, 21 March 2022 and 22 April 2022 (the complainant’s supplementary pleas). UNWTO did so, in substance, in a communication dated 24 June 2022 (the Organization’s supplementary pleas).

2. One matter should be addressed at the outset. In the Organization's supplementary pleas, UNWTO developed an argument, over 6 pages, concerning why the decision to dismiss the complainant was lawful or at least justified. While it is true that the Tribunal adverted in Judgment 4453 in consideration 18, to the possibility that the complainant "may well have been found guilty of the misconduct alleged", that observation, together with the order about further submissions on material damages, was not intended to be a licence to UNWTO to do what it singularly failed to do (have regard to Mr R.'s position) and advance a case which it could readily have advanced in its reply or possibly in its surrejoinder in the initial proceedings.

3. The possibility of dismissal for misconduct in any event and its bearing on material damages was intended to be assessed at a level of generality (as it is hypothetical) by reference to the evidence and arguments advanced in the initial proceedings.

4. The first issue addressed in the supplementary pleas of both parties is loss of salary (or loss of future income). The amount was quantified by the complainant in his initial submissions leading to Judgment 4453 as 129,000 euros. It is now quantified as 386,862 euros. UNWTO argues that this latter amount constitutes a new claim. It is not. It is simply the re-quantification of a claim already made, namely a claim for loss of future income. In any event, UNWTO contests the amounts sought. One point of difference is whether the loss of future income should be assessed by reference to a retirement age from UNWTO of 62 years or 65 years. The latter is the normal age of retirement but, it appears from the material before the Tribunal, the complainant would have had the option of retiring at 62 years. Accordingly, some allowance needs to be made for that possibility. UNWTO also contests an assumption made by the complainant in his calculations, that he would have been paid salary increments and step increases which are, respectively, conditional on official conduct and satisfactory performance. Having regard to the circumstances of this case, this is a valid observation. Taking into account the matters referred to in this and the preceding consideration, the Tribunal assesses the loss of future income (including

interest) and pension entitlements addressed in the following consideration in the sum, in aggregate, of 200,000 euros.

5. The next issue raised in the supplementary pleas of both parties is a claim for 434,522 euros being the asserted lost pension benefits to the complainant and his wife by virtue of his dismissal on 2 August 2018 with retroactive effect from 16 May 2018. In calculating the loss, the complainant refers, specifically, to the methodology adopted in Judgment 480 being the difference (actuarially calculated) between the pension the complainant was receiving as a result of his termination and the pension he would have received had his appointment been renewed, concluding five years later. However, as UNWTO points out, the pension payments actually received are the product of an election by the complainant to receive a pension of a particular character and in a particular amount. It also argues, that had the election been a different one, the amounts he would be receiving by way of pension payments would have been different and in a higher amount albeit commencing from a later time. The complainant makes no allowance for the possibility he may have been dismissed in any event. Ultimately the complainant bears the onus of establishing material damages. Given the very significant amounts claimed it is not unreasonable to expect him to more clearly justify the amounts claimed having regard to these and other relevant considerations. He has not done so. However, the Tribunal, from time to time, awards in situations broadly analogous to the present, damages in an amount equal to the employer's contribution to the pension (see, for example, Judgments 4411, consideration 18, 4234, consideration 10, and 4170, consideration 15). It will do so in the present case and the amount is included in the damages referred to at the conclusion of the preceding consideration.

6. The complainant also requests that he "be enrolled in After Service Health Insurance" which would have occurred, so he submits, after 10 years' service with UNWTO, namely on 1 January 2019 and "a few months" after the summary dismissal decision. There are several problems with this claim. Fundamentally, any financial loss associated with the deprivation of membership of a particular health fund would

include a loss occasioned by the non-payment of claims for medical expenses incurred and otherwise recoverable from that fund. Secondly, the complainant does not establish that he could be enrolled in that health fund in the absence of actually serving, as a matter of fact, the qualifying period. Thirdly, this claim assumes the complainant would not have been dismissed before 1 January 2019. As earlier noted, the possibility he would have been dismissed in any event was recognised by the Tribunal in Judgment 4453. While acknowledged to be hypothetical, no attempt is made by the complainant to address this question in the context of this claim. Accordingly, this claim is rejected.

7. The final issue concerns taxes paid as a consequence of the complainant losing the benefit of tax exemption for his motor vehicle as an international civil servant employed by an international organisation. The submissions of both the complainant and UNWTO are a little obscure. UNWTO appears to suggest that the complainant would have had to pay the tax upon his retirement in any event. However, more fundamentally, this loss, if it be a loss, was only remotely, and too remotely, connected with the complainant's dismissal. This claim is rejected.

DECISION

For the above reasons,

1. UNWTO shall pay the complainant 200,000 euros material damages within 30 days from the public delivery of this judgment.
2. All other claims are dismissed.

In witness of this judgment, adopted on 27 October 2022, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 28 November 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ