

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G. (No. 2)

v.

UNWTO

**DETERMINATION OF MATERIAL DAMAGES
AND CONSEQUENTIAL ORDERS**

135th Session

Judgment No. 4577

THE ADMINISTRATIVE TRIBUNAL,

Considering point 2 of the decision in Judgment 4456 on the second complaint filed by Ms A. G. 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 complainant's communications of 11 April 2022, 17 June 2022 and an undated subsequent communication from UNWTO provided by the complainant;

CONSIDERATIONS

1. In Judgment 4456, 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 her employment. The Tribunal did so principally because, to use the language in consideration 20 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 April 2022 and 17 June 2022 (the complainant's supplementary pleas).

UNWTO did so, in substance, in an undated subsequent communication provided by the complainant.

2. One matter should be addressed at the outset. In the Organization's supplementary pleas, UNWTO developed an argument concerning why the decision to dismiss the complainant was lawful or at least justified. While it is true that the Tribunal adverted in Judgment 4456 in consideration 20, 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 as 754,254 euros. 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 her calculations, that she 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 280,000 euros.

5. The next issue raised in the supplementary pleas of both parties is a claim for 660,838 United States dollars being the asserted lost pension benefits to the complainant by virtue of her dismissal mid-2018. In calculating the loss, the complainant relies on the difference between the pension the complainant would have received but for her dismissal on her attaining a retirement age of 65 in September 2025, and the amount she will receive as the product of an election by her to receive a full deferred pension. But apart from anything else, in her submissions, she effectively acknowledges that the former amount would come about if she had continued to pay contributions towards her pension between the time of her dismissal and what she says was her future retirement date at age 65. But this is plainly an untenable argument given that no such payments were or would be made. And, in any event, as acknowledged in Judgment 4456 she may well have been dismissed lawfully and well before her retirement age in September 2025. Ultimately the complainant bears the onus of establishing material damages. Given the very significant amounts claimed it is not unreasonable to expect her to more clearly justify the amounts claimed having regard to these and other relevant considerations. She 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. In relation to health insurance, the complainant has continued to contribute to the after-service health insurance Scheme and make payments to UNWTO's health insurance provider. In total she will have, by September 2025, paid approximately 15,000 euros in this respect. The complainant requests that she be reimbursed these amounts because the amounts claimed for future loss of salary were net amounts. That is to say, as the Tribunal understands the argument, if she had succeeded

in claiming the full amount of future salary lost it would not have included contributions made as just discussed. The contributions should be provided for separately by a specific award of damages. But the complainant derives a benefit from making these payments. They do not constitute a compensable loss. Accordingly, this claim is rejected.

7. The next issue concerns taxes paid as a consequence of the complainant losing the benefit of tax exemption for her motor vehicle as an international civil servant employed by an international organisation. However, this loss, if it be a loss, was only remotely, and too remotely, connected with the complainant's dismissal. This claim is rejected.

8. The next head of material damages claimed, is the costs she has incurred in seeking to obtain the status of a legal resident in Spain where she owns a house and a car and has an established life. Before her dismissal she had the benefit of residency as a result of the Headquarters Agreement between the Kingdom of Spain and the World Tourism Organization. Again, however, 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 280,000 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