

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

O.

v.

IOC

(Application for execution)

137th Session

Judgment No. 4747

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 4447 filed by Ms L. O. on 8 September 2022, the reply of the International Olive Council (IOC) of 2 December 2022 and corrected on 7 December, the complainant's rejoinder of 3 March 2023 and the IOC's surrejoinder of 5 May 2023;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant applied on 8 September 2022 for the execution of Judgment 4447, delivered in public on 27 January 2022, on her first complaint. The Tribunal's case law establishes that, according to the provisions of Article VI of its Statute, the Tribunal's judgments are "final and without appeal", and they are therefore "immediately operative"; the principle that its judgments are immediately operative is also a corollary of their *res judicata* authority. For this reason, international organizations which have recognized the Tribunal's jurisdiction are bound to take whatever action a judgment may require (see, for example, Judgment 3152, consideration 11, and the case law

cited therein). The parties must work together in good faith to this end and the execution of a judgment must occur within a reasonable time, having regard to all the circumstances of the case, especially the nature and the scope of the action which the organization is required to take (see, for example, Judgments 3656, consideration 3, 3066, consideration 6, and 2684, considerations 4 and 6).

2. The complainant had centrally alleged, in the internal appeal leading to her first complaint, that, in 2016, the Executive Director unlawfully withdrew some of her functions without any prior notification, consultation or justification, taking advantage of her sick leave in June 2016 to do so; refused to provide any justification for the changes in her duties; disregarded and failed to respond to various queries she made about the matter; allowed the Head of the Environment Department (who was not her supervisor) and a staff member, who had been given most of her functions, to harass and bully her, causing her humiliation and professional discredit; injured and harmed her health; prevented her from participating in promotional events; disregarded her several requests for an internal settlement of the dispute; and adopted a dismissive attitude to the good faith she had shown in waiting for several months for a reply before she could appeal to the Joint Committee.

3. The complainant had challenged the internal appeal procedure mainly on the basis that her right to have her internal appeal heard by a properly functioning appeal body was violated. She also alleged that there were unjustifiable delays in the internal appeal procedure and unacceptable breaches of confidentiality; that the Joint Committee's mandate had expired at the material time; that its composition was biased in favour of the Administration; that the Chairman of the Committee had a conflict of interest and showed "bad faith and misleading conduct" in performing his administrative duties; that, in contravention of its mandate and the rules governing its procedure and past practice, the Joint Committee was assisted by an external lawyer, violating her right to due process; that, although the rules governing the procedure of the Joint Committee made no provision for it to conduct *in camera* meetings before the hearing of an appeal, it conducted such meetings without

informing her, delivered the minutes of those meetings to the external lawyer to prepare the Administration's defence, but denied her access to the minutes; and that, notwithstanding her request, she was unlawfully denied access to a copy of the document which the external lawyer prepared for the Administration and for the Joint Committee even as a copy of the dossier prepared for her case, which contained her confidential documents (her employment letter and medical certificates), was given to the external lawyer.

4. The Tribunal concluded, among other things, that certain events which occurred during the internal appeal procedure violated the complainant's right to have her internal appeal heard by a properly functioning body; that the composition of the Joint Committee, which heard the complainant's internal appeal, bore out the complainant's observation that it could not be seen as an internal appeal body which was objective or impartial owing to the "contamination between professional tasks" and the overlapping of roles and functions; that the obvious close administrative roles of some of the members of the Joint Committee violated the complainant's right to have her internal appeal heard by a properly functioning body; and that the IOC's failure to provide the complainant with a copy of the legal opinion, which a lawyer it engaged provided to the Joint Committee who considered it in its deliberations and for the purpose of its report, violated the principle of equality of arms, which constituted a breach of due process (see Judgment 4447, considerations 10 to 14).

5. In order 1 of the decision in Judgment 4447, the Tribunal set aside the impugned decision in which the Executive Director accepted the opinion of the majority of the Joint Committee to dismiss the complainant's internal appeal. The Tribunal determined that the impugned decision was vitiated by procedural irregularities during the internal proceedings, without it being necessary to consider the substantive allegations the complainant proffered. In order 2 of the decision in Judgment 4447, the Tribunal remitted the case to the IOC in accordance with consideration 15 of the judgment, which stated as follows:

“In the foregoing premises and without it being necessary to consider the complainant’s other pleas, the impugned decision of 14 March 2018, which endorsed the report of the majority of the Joint Committee adopted pursuant to Article 5(g) of its Procedure, was procedurally irregular and will be set aside. Given this irregularity in the internal appeal procedure, the case will be remitted to the IOC to be heard by a newly constituted Joint Committee and for a new decision to be taken by the Executive Director on its opinion. The complainant’s claim for material damages may only be realized if she prevails on her substantive pleas (set out in consideration 3 of this judgment). Inasmuch as the present complaint succeeds on procedural grounds and the case will be remitted to the IOC, her claim for material damages remains in abeyance. However, as the Tribunal is not satisfied that the complainant has articulated the injury she suffered as a result of the procedural irregularities leading to the setting aside of the decision, no award of compensation for moral damages which she seeks will be made.”

6. The application for execution of Judgment 4447 results from an impasse between the parties about the composition of the Joint Committee to satisfy the Tribunal’s requirement that the remitted case be heard “by a newly constituted Joint Committee”. The complainant states that the IOC has failed to act in good faith in constituting a committee for that purpose, while the IOC insists that it has done everything necessary within its rules to appoint a committee to consider the remitted case.

After Judgment 4447 was delivered in public, the Committee was established under Article 50(1) of the Staff Regulations, which provided, among other things, that such committee should submit to the Executive Director “[a]ny comments or grievances regarding [...] any case connected with [the] Regulations”. Article 50(2) required the Executive Director to consult the Committee “on matters in regard to appeals”. Under Article 50(3), the Committee was to consist of a chairperson chosen by the staff from a list of five persons proposed by the Executive Director, two staff members of the Executive Secretariat designated by the Executive Director and two staff members of the Executive Secretariat designated by the Staff Committee. Members were to be appointed for one-year renewable terms.

7. The record shows that, on 21 March 2022, the complainant requested the IOC to implement Judgment 4447. She was informed by the Executive Director in a letter, dated 30 March 2022, that the case would be sent to the Joint Committee on 7 April 2022. He also informed her of the five members of the Committee as constituted at that time, as well as the alternates to the Chair and a member of the Administration, indicating that they would have remained in place as the pandemic had made it impossible for the staff assembly to meet to facilitate the reappointment of the two members to be designated by the Staff Committee. The only member of that Committee who had considered the complainant's internal appeal in 2018 was the Chairman (Mr M.). His alternate (Mr V.) was not a member of the 2018 Committee. In another letter of 29 April 2022, the Executive Director suggested to the complainant that Mr V. could have replaced Mr M. as the Chair of the Joint Committee to rehear her internal appeal, rendering the Joint Committee differently constituted from the 2018 Committee. Alternatively, the Executive Director suggested that the complainant may have wished to wait until the global health situation allowed for a new election to be conducted for the Chair of the Committee. The complainant eventually agreed, on 16 June 2022, to the Joint Committee chaired by Mr V. as proposed "in the interests of avoiding further delay that mediation might entail or an enforcement application with the [Tribunal]". She reserved the right, among other things, "to assert breaches of due process if the Committee does not act fairly, expeditiously, and impartially; or if it is determined that one of the members is conflicted". This response was, in the Tribunal's view, reasonable and in good faith to facilitate the execution of Judgment 4447.

8. On 6 July 2022, the Administrative Management and Human Resources Unit informed the complainant that a new Joint Committee had been constituted. The complainant's reply, through her counsel, seems to have suggested that the IOC had not acted in good faith as it had not complied with the previous agreement to the proposed composition of the Joint Committee. She considered that the new Committee did not comply with the requirements of consideration 15 of Judgment 4447. However, as the IOC explains, the new Committee was constituted on

4 July 2022 pursuant to Article 50 of the Staff Regulations as the mandate of the former Joint Committee had expired and after it was possible to renew the Staff Committee, on 25 May 2022, which was responsible for designating two staff members to the Joint Committee pursuant to Article 50(3) of the Staff Regulations. The complainant objected to the appointment of Mr M. as a member of the new Joint Committee on the basis that he was the Chair of the Committee which considered her internal appeal in 2018. She also objected to another member (Ms C.) on the basis that she was a member of the 2018 Joint Committee but had stepped down from the panel that considered her internal appeal because of conflict of interest. She further objected to another member (Mr G.) on the basis that he was “hierarchically dependent” on the Head of the Administrative Management and Human Resources Unit, who was the Head of the Legal Department in 2018 and who, in her view, had been asked, unlawfully, to assist the Joint Committee in her internal appeal. The complainant however provides no plausible explanation of the alleged objectionable or disqualifying hierarchical dependency. When the IOC referred her objections to the Chair of the Committee, she was informed, on 9 September 2022, that Ms C. and Mr M. had declared themselves ineligible to hear her case and they were replaced by their alternates. There is nothing on the record showing that she replied to that communication or to a reminder sent to her on 27 September 2022. She filed her application for execution on 8 September 2022.

9. Considering the foregoing, it is obvious to the Tribunal that, by 9 September 2022, the IOC had done what was necessary towards the execution of order 2 of the decision in Judgment 4447 and consideration 15 of that judgment in good faith and within a reasonable time, given all of the circumstances. The complainant’s further objection, in her rejoinder, to two other members of the new Joint Committee constituted to consider her case – Ms G. (to whom she had not previously objected) on the basis that she was “hierarchically dependent” on Mr M., and Ms K. (Ms C.’s alternate) on the basis that she was “hierarchically dependent” on Ms C. – does not advance her application

any further as she does not explain the alleged objectionable or disqualifying hierarchical dependency.

10. For the foregoing reasons, her application for execution of Judgment 4447 will be dismissed.

DECISION

For the above reasons,

The application for execution is dismissed.

In witness of this judgment, adopted on 2 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Michael F. Moore, Vice-President of the Tribunal, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

MICHAEL F. MOORE

HUGH A. RAWLINS

MIRKA DREGER