

FIFTY-SECOND ORDINARY SESSION

In re GOTSCHI (No. 2)

(Execution of Judgment No. 523)

Judgment No. 609

THE ADMINISTRATIVE TRIBUNAL,

Considering the application concerning the execution of Judgment No. 523 filed by Mr. Jost Gotschi on 24 May 1983, the reply of the Pan American Health Organization (PAHO) (World Health Organization) of 15 August, the applicant's rejoinder of 20 September and the organization's surrejoinder of 31 October 1983;

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

Having examined the written evidence;

CONSIDERATIONS:

1. On 18 November 1982 by Judgment No. 523 the Tribunal decided that the organization had on 6 March 1981 wrongfully terminated the complainant's contract of employment which was not due to expire until 30 September 1983. The complainant claimed as compensation US\$58,782, this sum being the amount of the salary and emoluments he would have been paid if he had served until the end of his contract, less the termination indemnity which he had received. By the said judgment the Tribunal ordered the organization to pay to the complainant \$40,000 as "compensation for the unlawful termination of his contract" and also \$6,000 as costs.
2. On 4 January 1983 the Organization paid to the complainant \$46,000 in execution of the said judgment. By a letter of 21 January the complainant's lawyer asked the Organization for confirmation that the "US imposed income taxes on the salary awarded to him will be borne (or reimbursed) by the Organization". The letter referred to the possibility that the complainant might "ask the Tribunal for an interpretation of the judgment". The Organization replied on 9 February that they would not reimburse the complainant for any taxes he might have to pay.
3. On 25 May 1983 the complainant filed the present complaint. In it he gave the date of the decision impugned as "18 November 1982 (date of Judgment No. 523)" and prayed as relief that the Organization should be ordered to "reimburse the taxes the complainant is required to pay on the \$46,000 awarded". To the objection in the reply that the complaint was irreceivable under Article VII of the Tribunal's Statute in that the complainant had failed to exhaust internal remedies, the complainant rejoined that the "action" was not a "routine appeal", but was "either a request for clarification of a prior judgment or a request for reconsideration of the remedy" in Judgment No. 523.
4. The complaint or "action" fails under both these heads. As to the first head, no obscurity in the judgment is alleged or identified; on the contrary, it is stated in the complainant's argument in the dossier that it is clear from the figures "that the Tribunal's intention was to make the complainant whole by providing him with the salary he would have earned". As to the second, the argument does not attempt to bring the case within the very limited grounds on which the Tribunal permits reconsideration or review. What the complainant is doing is to seek a form of relief which was not sought in the case decided by Judgment No. 523.

DECISION:

For the above reasons, and without finding it necessary to examine the question of receivability,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 April 1984.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.