

SEVENTY-THIRD SESSION

In re PRICE (No. 2)

(Application for execution)

Judgment 1168

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. William Earl Price on 1 August 1991 for execution of Judgment 1053, the reply received from the International Atomic Energy Agency (IAEA) on 10 October, the complainant's rejoinder of 2 December 1991 and the Agency's surrejoinder of 10 January 1992;

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

Having examined the written evidence;

CONSIDERATIONS:

1. This is an application for the execution by the International Atomic Energy Agency of Judgment 1053 of 26 June 1990 on complaints by the present applicant and by four other officials of the Agency. In those complaints the five complainants claimed from the Agency the refund of United States income tax levied on lump-sum payments they had received from the United Nations Joint Staff Pension Fund. The amounts Mr. Price claimed were 43,574 United States dollars and interest thereon at the rate of 12 per cent a year from 17 April 1989, the date at which the tax had become payable, to the date of payment.

2. In Judgment 1053 the Tribunal allowed the complaints, though it awarded interest at the rate of only 10 per cent a year, and on 17 August 1990 the Agency paid the applicant the full amount of the award in United States dollars. The applicant wrote to the Director General on 12 March 1991 pointing out that he had suffered loss: in order to pay the tax at the due date he had had to find \$18,800 over and above dollar funds from other sources and at the then prevailing rate of exchange that sum had cost him 251,486.61 Austrian schillings. By the time the Agency paid him the award the value of the dollar had fallen against the schilling. Had he converted the \$18,800 back at the lower rate he would have obtained only 204,450 schillings, thereby incurring a loss of 47,036.61 schillings. In his reply of 26 March 1991 the Director General refused his claim to payment of that amount, plus interest, and that is the decision he is impugning.

3. The Agency pleads that his application is irreceivable on the grounds (1) that it is *res judicata* and (2) that it is time-barred.

The Tribunal upholds the plea on the first ground. In his original complaint the applicant stated his claim in dollars and he was accordingly awarded and paid the amount in that currency. If there was any risk of loss due to fluctuations in the rate of exchange he ought to have raised the issue in the context of his original complaint. Had he explained the circumstances and claimed reimbursement in two currencies - viz. \$24,774 (\$43,574 less \$18,800) and 251,486.61 schillings - there would have been no reason not to entertain his claim, though he would then have run the risk of a rise in the value of the dollar as against the schilling. Since he chose to state his claim in dollars and succeeded, the matter is *res judicata* and he may not have it reconsidered. There is no merit in his plea that "lack of experience" explains why he did not think of the effect of changing rates of exchange: *ignorantia juris haud excusat*.

4. Since the Agency succeeds on the first ground, there is no need to entertain its plea about a time bar.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

Jacques Ducoux
Mella Carroll
E. Razafindralambo
A.B. Gardner

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