

EIGHTY-FOURTH SESSION

In re A.-B. (No. 2)

Judgment 1681

(Application for execution)

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mrs. F. A.-B. on 6 March 1997 for the execution of Judgment 1432, the reply of 9 June from the World Health Organization (WHO), the complainant's rejoinder of 11 July and the WHO's surrejoinder of 14 October 1997;

Considering Article II, paragraph 5, of the Statute of the Tribunal;
Having examined the written submissions;

CONSIDERATIONS

1. In her first complaint Mrs. A.-B. claimed the quashing of a decision by the Director-General of the World Health Organization not to confirm her reappointment as from 8 March 1992 and an award of damages. By Judgment 1432 of 6 July 1995 the Tribunal quashed that decision and ordered the Organization to pay her the emoluments it

had denied her from 8 March 1992 to 7 March 1994, plus interest at the rate of 10 per cent a year from the date at which each sum had fallen due. It awarded her 10,000 Swiss francs in moral damages and 7,500 in costs and ordered her reinstatement in her pension rights for the material period.

2. In execution of the judgment the Organization paid her the 17,500 Swiss francs in moral damages and costs and she got that amount on 31 August 1995. It paid her another 126,199.39 francs on 28 November 1995 and 2,847.47 on 6 December 1995; 29,210.47 United States dollars on 10 June 1996; another 3,997.44 dollars (5,036.77 francs) on 5 July 1996; and, lastly, 11,959.03 francs on 16 May 1997.

Being dissatisfied with both the reckoning and the manner of payment of those amounts, she has lodged this application for the execution or else the interpretation of the judgment.

3. She objects to the figure of basic salary that the WHO has taken for the purpose of working out her entitlements for the material period. The Organization put her gross salary at 54,879 dollars a year whereas, she says, the sum stipulated in her contract was 59,568. A memorandum of 13 March 1992 that referred to her posting in Namibia did put her basic salary at 59,568. But quite obviously that was the figure due to someone with a dependant spouse or child. In 1991 she asked to have her father — not her husband — treated as a dependant. She did not later change her mind even though her husband was, it seems, just about to join her in Namibia when poor health forced her to leave the country. The WHO was therefore right to base its reckoning on what she would have earned had she stayed on.

It was right to take that figure for the purpose of reckoning her post-adjustment allowance and to treat her as having neither dependant husband nor dependant child for the purpose of reckoning her allowances under Staff Rules 360 and 365. So any claim by her that assumes a gross salary of 59,568 dollars a year must be dismissed.

4. Secondly, she submits that the amounts which she had the Organization make over to her in Swiss francs, though they were stated in dollars, should have been converted at the rate of exchange as of the date at which each sum had fallen due. She wants the

Organization to revise the amounts by taking the prevailing monthly rates from March 1992 to March 1994.

Her plea fails. The WHO disregarded neither the terms of the judgment nor any principle of law in converting the sums into Swiss francs at the rate prevailing at the date of payment.

5. Thirdly, she objects to the amount of the interest. She submits that, having taken too long to settle, the Organization owes her 56 days' interest on the 17,500 Swiss francs she got on 31 August 1995 and interest on all the amounts which she had already got or which, according to the claims in her original complaint, were still due to her.

Again she is mistaken. The Organization paid her the awards of moral damages and costs within a reasonable time after the publication of the judgment on 6 July 1995. The various sums paid to her purported to include interest at the rate of 10 per cent a year from the date at which each had fallen due. She offers no evidence of any mistake in working out that interest. In any case she is not entitled to the payment that she claims of interest "on the capital and interest already paid".

6. As for her pension rights, the Organization has properly executed Judgment 1432. She herself admits to being satisfied with the explanation it eventually gave her. And she is wrong to claim interest on a sum which it withheld from the payment it made on 28 November 1995 and which she says it took too long to make over to the United Nations Joint Staff Pension Fund. The delay caused her no injury. As for the interest on the amount of her own contributions to the Fund, which the Organization was to pay, on 16 May 1997 it paid her 2,942.68 dollars under that head. She is entitled to no further sum in interest and that is the end of the matter.

7. Under the heading "Sundry claims" she maintains that the Organization has omitted several payments. She contends that she was entitled to compensation for a score of days of accrued leave, not just the dozen the Organization allowed her. She claims 10,572 French francs, plus interest, to cover the costs of removal from Geneva to Montpellier in July 1992. She believes that the Organization was wrong to dock from her pay medical insurance contributions and the price of

an airline ticket which she was unable to use for return travel from Namibia in 1992. Not one of those claims can succeed.

8. First, the Organization's reckoning of her accrued leave was correct. It was right to dock from the total the days off work for which she had claimed sick leave from 24 to 31 December 1991 but which had never been approved.

9. Secondly, it repatriated her to Geneva. Nothing in the Staff Rules required it to refund the costs of her removal from Geneva to Montpellier.

10. Thirdly, Judgment 1432 ordered it to treat her as having been its employee from 8 March 1992 to 7 March 1994. As such she was also to be treated as a member of the medical insurance fund in the same period and as owing contributions on that account.

It is true that the Organization agreed on 23 October 1996 to waive the contributions if she proved coverage by some other insurance scheme during that period and expressly waived entitlement under the WHO one, and she does promise such waiver "so far as necessary". But she has not yet adduced the proof that the Organization demanded of other coverage. With her rejoinder she produces a social security card belonging to her husband, and it does state that she is covered by his scheme. But it is valid only from 21 August 1996. The issue may remain open. Although it is not proved that the Organization owes the complainant 11,513.87 dollars, the amount deducted against insurance contributions, she may still produce the information the Organization is entitled to see. For the time being she has not.

11. Lastly, though the Organization paid to bring her back from Namibia, she did not return to it the unused part of the airline ticket until 19 June 1996. By then it had missed the deadline for claiming a refund from the airline. So it is right to refuse to bear the consequences of her negligence.

12. The conclusion is that the Organization has executed the judgment properly and even gone further than it need in some respects. It did take long to make some of the payments, but that was understandable: the calculations were complicated and the complainant's own objections required elaborate double-checking. In any event she has no claim to moral damages either on the grounds of

any bad faith on the Organization's part — which the evidence does not bear out — or of the delays over payment, for which the payment of interest afforded fair redress.

DECISION

For the above reasons,
The application is dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Jean-François Egli, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

MICHEL GENTOT
JEAN-FRANÇOIS EGLI
JAMES K. HUGESSEN

A.B. GARDNER