

## EIGHTY-SEVENTH SESSION

### *In re Amira (No. 2)*

(Application for execution)

#### **Judgment 1873**

The Administrative Tribunal,

Considering the application for the execution of Judgment 1317 filed by Mr Charles Mbagaya Amira on 29 May 1998 and corrected on 14 September, the reply of 21 December 1998 from the International Telecommunication Union (ITU), the complainant's rejoinder of 12 February 1999 and the Union's waiver of its right to submit a surrejoinder;

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

Having examined the written submissions;

#### CONSIDERATIONS

1. By Judgment 1317 of 31 January 1994 the Tribunal set aside a decision whereby the Secretary-General of the ITU refused to renew the complainant's appointment as Senior Regional Representative for Africa. It ordered the organisation to pay him damages in an amount equivalent to three years' salary and allowances less any occupational earnings he might have had since 30 September 1990.

Though the Union immediately made over the 5,000 Swiss francs that the Tribunal had awarded him in costs, it was slow to settle the damages. The complainant attributes the delay to reluctance on the part of the organisation, and the ITU to the time it took the complainant to provide the information it needed in order to work out his occupational earnings, which it was to deduct from the amount of the damages. Thus, although the complainant received an initial sum of 70,000 United States dollars on 6 June 1994 and a further 8,000 dollars in November 1996, he had to wait until 29 May 1998 before receiving an additional 50,000 dollars and until 4 August 1998 for a further 84,374 dollars which, according to the Union, was the remainder of what it owed him. Such were the circumstances in which he applied to the Tribunal for execution of Judgment 1317. He accuses the Union of calculating the amount of the indemnity wrongly and of tardiness in paying it. He asks the Tribunal to award him various amounts in further damages.

#### *The amount of the damages*

2. He contends that the total amount the Union paid him is not in keeping with Judgment 1317, of which he claims full execution. For one thing there was a mistake in the calculation of his earnings from the Organization of African Unity (OAU). For another, the Union failed to deduct from his occupational earnings the expenses he had incurred in acquiring them. Furthermore, in reckoning the three years' salary and allowances, it should have counted allowances such as the education and travel grants for his children and an allowance he used to get for use of his private car when he was serving in Addis Ababa.

3. He is right in alleging that there was a mistake in the calculation of his earnings from consultancy work for the OAU. He himself said that they amounted to 11,625 dollars. But that was for the contract period from 13 January to 24 February 1994, whereas the period that the Tribunal set for calculating the damages ended on 31 January 1994.

The ITU should therefore have deducted 3,375 dollars, not 11,625 dollars, from the amount it was to pay him, so he is entitled to a further 8,250 dollars. The Union does not deny that this is so, though it submits that the mistake was not of its own making but a consequence of the inaccurate and inconsistent information he supplied.

4. Citing Judgment 1748 of 9 July 1998 (*in re* Limage No. 2) the complainant argues that in reckoning his occupational earnings from 1991 to 1994 the Union should have counted the expenses he incurred in earning that

money. But his position is very different from that of the complainant in Judgment 1748. There is obviously no reason why the ITU should pay transport and subsistence costs he incurred while under contract to other international organisations. Besides, he made no such claim before coming to the Tribunal.

5. The question of which allowances may be included in the damages owed to him is less straightforward. The Union took as the basis for calculation his last monthly salary, without deductions for pension and insurance, and multiplied it by thirty-six as Judgment 1317 required. It worked out the monthly salary as being 7,340.75 dollars including family allowance but excluding the education grant.

By 24 May 1994 the complainant had noted the Union's calculation, reserved his rights with regard to inclusion of the education grant, which he says is due to him under Regulation 3.11 of the ITU Staff Regulations, and to interest for late payment.

6. Paragraph 2 a) of Staff Regulation 3.11, which is about the education grant, reads:

"an education grant shall be available to an internationally recruited staff member who is serving outside the country of which he is a national according to Regulation 4.6 and whose child is in full-time attendance at a school, university, or similar educational institution of a type which will, in the opinion of the Secretary-General, facilitate the child's resettlement in the staff member's recognized home country. ..."

Thus, to qualify for the grant a staff member must be actually employed in a country other than his own. Although the termination of the complainant's appointment was attributable to a decision not to renew it which the Tribunal deemed unlawful, it is nonetheless a fact that he did not actually serve in a country other than his own after his contract expired. So the ITU cannot be required to pay for an education which would in no way facilitate his children's resettlement in their home country. Even if he had been entitled to the grant had it kept him on, his claim would in any event have been disallowed.

7. The same argument holds good for his claim to the inclusion of the monthly allowance of 50 dollars he got for using his own car because he was not provided with an official vehicle. That allowance too obviously depended on his actually serving in Addis Ababa and no longer applied after he returned to his country of origin.

8. As for his claims to the other allowances listed at the end of the complaint - some of which the ITU did include - he produces no arguments in support of them which could convince the Tribunal. The conclusion is that, apart from the mistake noted in 3 above, which it must set right, the Union's calculation of the amount of the damages was fully consistent with the judgment it was required to execute.

#### *The delay in executing Judgment 1317*

9. The ITU was very tardy in meeting its obligations. Not until 1998, in two payments of 29 May and 4 August, did it pay the complainant the 134,374 dollars it still owed him in damages. Up until then it had made over only 78,000 dollars, in May 1994 and November 1996. Yet the judgment ordering the payment was delivered on 31 January 1994.

10. The ITU is largely to blame for the excessive delay. On 19 May 1994 the complainant sent the Union an affidavit in which he stated on oath that his only occupational earnings during the period in question were from his work for the Economic Commission for Africa and the OAU. On 24 May 1994 his counsel informed the Union that, since he had complied with its request of 2 May 1994, in particular by producing the affidavit it had asked for, it must pay what it owed him at once, otherwise he would claim interest for late payments. In a letter of 2 June 1994 followed by another of 7 June, in answer to a further request for information and documents, his counsel again said that she saw no reason for the Union to require further proof of negative facts, that the documents would be produced if necessary but that it would take time and that the interest on the amounts due would continue to run. Nothing in the documents which were then produced, including the certificates of 8 March 1996 and 21 May 1998 from the Kenyan tax authorities, contradicted the complainant's original statements. Furthermore, after the complainant produced convincing evidence on 24 October 1996, the Union preferred to seek guidance from the President of the Tribunal in an application that the Tribunal was unable to entertain, thereby prolonging the process only to accept the evidence in the end.

11. In these circumstances, the Tribunal considers that the Union is responsible for its delay in executing the judgment of 31 January 1994, since it failed to make the last payments until 29 May and 4 August 1998, after more than four years of procedures which proved pointless since in the end it accepted the complainant's calculations for

the most part. The delay caused the complainant injury for which he is entitled to redress, and the Tribunal awards him a lump sum of 50,000 dollars. That award being relief for all forms of injury, there is no need to entertain his many other claims.

12. Since his application largely succeeds, he is also entitled to an award of costs which the Tribunal sets at 10,000 Swiss francs.

## DECISION

For the above reasons,

1. The ITU shall pay the complainant further damages in an amount of 8,250 United States dollars for the mistake in calculation referred to under 3 above.
2. It shall pay him 50,000 dollars in compensation for the injury it caused him by its delay in executing Judgment 1317.
3. It shall pay him 10,000 Swiss francs in costs.
4. His other claims are dismissed.

In witness of this judgment, adopted on 14 May 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

*(Signed)*

Michel Gentot  
Mella Carroll  
James K. Hugessen

Catherine Comtet