

EIGHTY-EIGHTH SESSION

In re Tueni (No. 2)

(Application for execution)

Judgment 1922

The Administrative Tribunal,

Considering the application for the execution of Judgment 1772 filed by Mrs Ariane Elisabeth Tueni on 24 March 1999 and corrected on 26 April, the reply of 4 August from the United Nations Industrial Development Organization (UNIDO), the complainant's rejoinder of 17 September and UNIDO's surrejoinder of 29 October 1999;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant seeks the execution of Judgment 1772 delivered on 9 July 1998. The case is in virtually all respects, except for irrelevant details, identical to Miss Christl Zaunbauer's second case, which has led to Judgment 1921 also delivered this day.
2. The complainant was born in February 1943. She joined the staff of UNIDO in January 1973 and in June 1996 her employment was terminated. In Judgment 1772 the Tribunal found the Administration's action to have been flawed. It ordered that the complainant be reinstated but only up to February 1998 the month in which she qualified for early retirement. The reason for that limitation was that the Organization had put in place in January 1998 a voluntary separation programme offering extremely generous benefits to employees who, having reached age 55 and having 25 years of service, agreed to take early retirement. The complainant would have qualified for this programme in February 1998.
3. In Judgment 1772 the Tribunal took care to specify that the complainant was to be entitled to all benefits upon her early retirement in February 1998. The Organization, however, refuses to give her the benefits of the voluntary separation programme on the wholly specious ground that it was not in effect at the time she was improperly terminated in June 1996 and that she was not an employee, and therefore not eligible, when the programme came into effect in 1998. As in *in re* Zaunbauer No. 2 this is a clear case of a defendant attempting to plead its own wrongdoing and is not to be tolerated.
4. The Tribunal will order the Organization to execute Judgment 1772 and to grant to the complainant all the benefits to which she would have been entitled under the voluntary separation programme if she had taken early retirement in February 1998. All monetary payments shall bear interest at the rate of 8 per cent per annum as from 9 July 1998. UNIDO shall also pay the complainant's costs in the amount of 2,000 United States dollars.

DECISION

For the above reasons,

1. The defendant is ordered to pay the complainant all the benefits to which she would have been entitled under the voluntary separation programme if she had taken early retirement in February 1998. All sums due shall bear interest at 8 per cent per annum as from 9 July 1998.
2. The defendant shall pay the complainant's costs in the amount of 2,000 United States dollars.

In witness of this judgment, adopted on 11 November 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 3 February 2000.

**Michel Gentot
Mella Carroll
James K. Hugessen**

Catherine Comtet

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