

The Administrative Tribunal,

Considering the application for interpretation of Judgment 2351 filed by the International Telecommunication Union (ITU) on 3 February 2005, the reply by Mr M.H. D. of 8 April, the Union's rejoinder of 13 May and the letter of 8 June 2005 by which the complainant's counsel informed the Registrar that the complainant did not wish to file a surrejoinder;

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

Having examined the written submissions;

### CONSIDERATIONS

1. In Judgment 2351 delivered on 14 July 2004 the Tribunal decided as follows:

"1. The disciplinary sanction and the decision not to renew the complainant's contract are set aside.

2. The Union shall pay the complainant compensation calculated as explained under 9 above.

3. It shall also pay him 3,000 Swiss francs in costs.

4. All other claims are dismissed."

Consideration 9 of that judgment reads as follows:

"The outcome is that the complainant is entitled to receive compensation equivalent to the salary and allowances he would have received if his contract had been renewed on 1 November 2001, until such time as the ITU takes a new decision concerning the renewal of his contract."

2. Since it disagreed with the complainant with regard to the amount of compensation payable pursuant to the Tribunal's decision, the ITU on 3 February 2005 filed an application for interpretation of paragraph 2 of the decision in Judgment 2351. It asks the Tribunal to decide, by interpretation or by any other means, that the compensation it should pay the complainant in accordance with the terms of that paragraph should be understood as being subject to the deduction of all earnings received by the complainant between 1 November 2001 and 21 July 2004, the date at which he was notified of the decision not to renew his short-term contract.

It considers that the meaning and scope of paragraph 2 of the decision in Judgment 2351 are uncertain, because the way in which the compensation payable to the complainant should be calculated is not clearly specified.

In its opinion the compensation awarded to the complainant is intended to make up for his loss of earnings, so that the amount the complainant earned between 1 November 2001 and 21 July 2004 should be deducted from "the salary and allowances he would have received if his contract had been renewed on 1 November 2001". It maintains that this interpretation is not only a matter of common sense but is also based on the Tribunal's case law. It adds, moreover, that this interpretation appears to be borne out by the method of calculation advocated by the complainant himself in his complaint leading to Judgment 2351, since he asked the Tribunal to "[a]ward [him] compensation for the financial loss he [had] incurred, from November 2001, as a result of the non-renewal of his contract of employment with the ITU, which [was to] be calculated on the basis of the difference between what he might have earned at the ITU if he had continued to work there after November 2001 until the day of the Tribunal's ruling, and what he ha[d] actually earned since losing his employment with the ITU until the day of the Tribunal's ruling".

3. The Tribunal recalls that an application for interpretation is receivable only if the meaning of the Tribunal's ruling is uncertain or ambiguous (see in particular Judgment 1306, under 2).

In this case, the Tribunal agrees with the complainant that the meaning of Judgment 2351 does not suffer from uncertainty or ambiguity such as might warrant interpretation. Finding that the disciplinary sanction was based on an arbitrary appraisal of the facts, the Tribunal set aside the sanction, which entailed annulling the decision not to renew the complainant's contract, and in compensation for the latter's injury, both material and moral, it awarded him an overall compensation with instructions for the way it should be calculated, without providing for any deduction. It should be made clear that the Tribunal was not unaware that the complainant had received earnings after leaving the ITU but it did not take account of them for the purpose of calculating the compensation. The ITU's statement, reminding the Tribunal that the complainant himself requested that his claim for compensation for the financial loss suffered as a result of the non-renewal of his contract "be calculated on the basis of the difference between the salary he might have earned [...] and what he actually earned since losing his employment with the ITU", is irrelevant. The ITU fails to note that that claim was not the only one the complainant filed. He had also requested the award of a fair sum as compensation for moral injury, which was why the Tribunal decided to award him an overall amount with no deductions.

4. In view of the above, the Tribunal considers that paragraph 2 of the decision in Judgment 2351 referring to consideration 9 of that judgment is unequivocal and requires no interpretation.

## DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 4 November 2005, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet