Registry's translation, the French text alone being authoritative.

103rd Session **Judgment No. 2638**

The Administrative Tribunal,

Considering the complaint filed by Mr J.-D. R. against the World Trade Organization (WTO) on 28 August 2006, the Organization's reply of 15 November and the letter of 20 November 2006 by which the complainant informed the Registrar of the Tribunal that he did not wish to enter a rejoinder;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. WTO Staff Rule 106.15(a), concerning eligibility for an education grant, is worded as follows:

"Subject to presentation of satisfactory evidence, an internationally recruited staff member assigned to a country which is not the country of the recognized home shall receive [an] […] education grant for each child for whom the staff member provides the main and continuing support and who is in full-time attendance at a school, university or similar educational establishment."

The WTO was founded on 1 January 1995, but its secretariat was not set up until 1 January 1999. The Staff Regulations of the United Nations and Staff Rules (hereinafter UN Staff Regulations and Staff Rules) applied to WTO staff until 31 December 1998, the date on which the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade (ICITO/GATT) ceased to exist.

The complainant, a Swiss national born in 1962, is the father of two children. He was recruited locally by the WTO under a two-year fixed-term contract commencing on 1 September 1998 to fill the position of counsellor at grade P.4. Since the Commission was due to become defunct on 31 December 1998, this contract was to expire on the same date. On 16 November the WTO offered the complainant a new contract, governed by the provisions of the WTO Staff Regulations and Staff Rules, which he accepted on 18 November 1998.

A Notice to the Staff bearing the reference OFFICE(05)/6, issued on 19 January 2005, informed staff that the Administration had decided to review the recruitment status of fixed-term and regular staff members who believed that their recruitment status had been erroneously determined at the time of their first appointment. On 10 February the complainant filled out the form in Annex III to the said notice, which was entitled "Request for international status". He also asked whether he was entitled to an education grant. By a memorandum of 29 July, the Director of the Human Resources Division notified him that, since he had been recruited to fill a Professional category post, he should have been designated as an international recruit. His status was changed accordingly with effect from 1 August 2005.

On 11 August the Administration informed the complainant that as a result of his change in status he was henceforth entitled to home leave, separation grant and repatriation travel. On 22 August the complainant again enquired about his entitlement to an education grant. He received an answer that same day to the effect that his entitlements would depend on his recognised home country. On 2 September the Director of the Human Resources Division informed him that Switzerland had been recognised as his home country and that since his home was in the country of his duty station – Geneva – he did not satisfy the requirements of Staff Rule 106.15(a) in order to be eligible for the education grant. The Administration confirmed that view in a memorandum of 26 September.

On 6 November 2005 the complainant lodged an appeal with the Joint Appeals Board. In the report which it issued on 22 May 2006, the Board held that the complainant had not demonstrated any errors that would necessarily call into question the validity of the decision to designate his home country as Switzerland and the linked decision that he was not eligible for an education grant. By a letter of 1 June 2006, which constitutes the impugned decision, the

Director of the Human Resources Division informed the complainant that the Director-General had decided to accept the Board's conclusion.

B. The complainant refers to the Joint Appeals Board's report and, as a preliminary argument, asserts that the WTO Staff Regulations and Staff Rules are applicable to his case.

He submits that the decision of 1 June 2006 is discriminatory. In his view, this is shown by the fact that he has suffered injury, which he estimates to amount to some 40,000 Swiss francs a year, and that a distinction is made between two groups of internationally recruited staff members, which gives rise to different treatment and which is based, according to WTO Staff Rule 106.15, on the determination of a staff member's home country. However, he contends, the Board's report shows that in fact the distinction is based solely on nationality, which, in his opinion, is contrary to the WTO Staff Regulations.

Furthermore, the complainant alleges that the impugned decision is unlawful with regard to three provisions of the Staff Regulations: Regulation 1.1, which mentions the principle of non-discrimination and which provides that the Organization shall at all times act with fairness and impartiality; Regulation 3.1, according to which the recruitment policy of the WTO shall be based on the principle of equal opportunity for all, regardless of nationality inter alia; and Regulation 6.1, which states that the Organization's compensation policy shall be consistent with the principle of equal pay for work of equal value.

Relying on Judgment 2313, the complainant adds that the principle of equality has been violated. He asserts that he is treated like locally recruited staff members, whereas his situation is relevantly different because it has been recognised that he was internationally recruited. In addition, he considers that he is in a similar situation to that of his colleagues who did not have Swiss nationality when they were internationally recruited because, in his view, nationality cannot be considered to be "a relevant difference warranting […] different treatment". Should the Tribunal nevertheless consider that his situation is relevantly different from that of the aforementioned colleagues and, as such, warrants different treatment, the above-mentioned principle would be breached on another count insofar as the impugned decision would be neither appropriate nor adapted to that difference in treatment.

The complainant asks the Tribunal to quash the impugned decision and to order the WTO to grant him the education grant with retroactive effect from 1 June 2006.

C. In its reply the Organization contends that the issue of the complainant's eligibility for an education grant is governed by the WTO Staff Regulations and Staff Rules. It submits that the complainant's situation warrants a difference in treatment and that he has failed to show that he has been subjected to discriminatory treatment. It explains that the determining factor in assessing eligibility for this grant is not the nationality of the complainant but whether his duty station is situated in his recognised home country. It adds that the grant in question is not part of a staff member's salary, but is a benefit attached to a specific personal situation, namely that of serving in a country that is not the staff member's recognised home country.

The Organization considers that the provisions which according to the complainant have been breached are either of a general nature or do not relate to the subject matter of the dispute. It draws the Tribunal's attention to Staff Regulation 6.8, according to which only internationally recruited staff members serving outside the country of their recognised home are entitled to an education grant.

As for the alleged violation of the principle of equal treatment, the WTO asserts that although a Swiss national whose recognised home country is Switzerland is not eligible for an education grant, he or she is nevertheless eligible for a number of benefits to which locally recruited staff members are not entitled, such as travel expenses to the duty station, removal expenses and the installation grant. The Organization fails to see why it is inappropriate not to pay the complainant the education grant, since he does not meet the conditions for receiving it. It therefore considers that the impugned decision is justified and based on reasonable grounds.

CONSIDERATIONS

1. The complainant, who has Swiss nationality, was recruited by the WTO in 1998 to fill a post at grade P.4. He was offered a first fixed-term contract commencing on 1 September 1998 at a time when the applicable staff rules were still those contained in the UN Staff Regulations and Staff Rules. On 16 November 1998 the Chief of

the Personnel Division offered him a new contract, governed by the provisions of the WTO Staff Regulations and Staff Rules, which the complainant accepted on 18 November 1998. He had been recruited locally but, following a review of the status of certain staff members who believed that they should have been recruited internationally, he was informed on 29 July 2005 that the Director-General had concluded, after examining his case, that since he had been appointed to a Professional category post, he should have been designated as an international recruit. The complainant's request that he receive an education grant for his two children, which he made in a letter of 10 February 2005 and reiterated several times thereafter, was denied. The Administration considered that he was not eligible for that benefit because his duty station – Geneva – was in his recognised home country, and the Director-General endorsed that view in a decision of 26 September 2005, against which the complainant appealed.

2. The Joint Appeals Board, to which the matter was referred, submitted its report to the Director-General on 22 May 2006. It considered that the Administration had rightly applied WTO Staff Rule 106.15(a), which provides in part that "an internationally recruited staff member assigned to a country which is not the country of the recognized home shall receive [an] […] education grant". Since the complainant's recognised home country was Switzerland and his duty station was Geneva, he was not entitled to this benefit.

3. The Director-General accepted the Board's conclusion by a decision of which the complainant was notified on 1 June 2006. The complainant asks the Tribunal to quash that decision.

4. He submits that the decision that he is not eligible for an education grant is discriminatory and that such discrimination, which is based on a staff member's nationality, is contrary to the express provisions of WTO Staff Regulation 1.1, 3.1 and 6.1 and to the principle of equal treatment.

5. During the internal appeal proceedings the parties put forward opposing views on the question of whether the present case is governed by the Staff Regulations and Staff Rules of the WTO or by those of the UN, but this issue must now be regarded as settled. Indeed, the Organization has endorsed the position of the Joint Appeals Board, and it emphasises that, in order to determine the complainant's home country – a point which is no longer in dispute – reference should have been made to the UN Staff Regulations and Staff Rules, which the WTO applied *mutatis mutandis* until 31 December 1998, but that "the relevant norms for the resolution of this dispute are the WTO Staff Rules and Regulations".

6. The complainant's submissions are, for the most part, based on the provisions of the WTO Staff Regulations and on the Tribunal's case law concerning the principles of non-discrimination and equal treatment.

7. According to Staff Regulation 1.1:

"The WTO shall at all times act with fairness and impartiality, and in full respect of the *Staff Regulations* and the applicable jurisprudence of the Administrative Tribunal of the International Labour Organization, in its relations with staff members. Its practices shall clearly reflect the principles of equal opportunity and non-discrimination. […]"

According to Regulation 3.1, "[t]he recruitment policy of the WTO […] shall be based on the principle of equal opportunity for all, regardless of gender, nationality, race or religion […]".

As for Regulation 6.1, it provides that the compensation policy of the WTO "shall be consistent with the principle of equal pay for work of equal value".

8. The complainant holds that the manner in which Staff Rule 106.15(a) has been applied to him violates the principle of non-discrimination on grounds of nationality. In his opinion, it is because he is Swiss that he is deprived of a financial benefit to which staff members of the Organization who are nationals of another country are entitled. The Tribunal cannot accept this line of argument: staff members' nationality is certainly of fundamental importance for determining their home. As stated in Staff Rule 104.7, "a staff member's home shall be deemed to be in the country of which the staff member is a national at the time of the appointment", but according to that same provision, this presumption may be rebutted for compelling reasons, for example where a staff member has resided for a prolonged period in a country other than that of which he is a national and has maintained close links with that country.

9. The main justification for granting benefits such as home leave or an education grant to some staff members is not that the beneficiaries have a particular nationality, but that their duty station is not in their

recognised home country. Far from being discriminatory, such practices, which moreover exist in most international organisations, are designed to restore a degree of equality between officials serving in a foreign country and those who are working in a country where they normally have their home. The two categories cannot be regarded as being in identical situations. Consequently, according to firm precedent, the principle of equality must not lead to their being treated in an identical manner when a difference in treatment is appropriate and adapted (see Judgment 2313, to which the complainant refers). For this reason, neither Staff Rule 106.15(a), nor the manner in which it has been applied to the complainant, constitutes discrimination which would be contrary to the general principles defined by the Staff Regulations. The fact that the complainant is designated as an international recruit affords him certain advantages compared with locally recruited staff, contrary to his submissions, but does not entitle him to the benefit that he is claiming, even though it is true that this entails a significant financial injury.

10. The Tribunal does not consider it possible, in these circumstances, to allow the pleas based on violation of the principle of equal treatment on which the complainant relies and therefore dismisses his complaint.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2007, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 19 July 2007.