

**108th Session**

**Judgment No. 2872**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 2616 filed by Mr T. R. F. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 28 May 2008 and corrected on 13 June, UNESCO's reply of 14 October, the complainant's rejoinder of 16 December 2008 and the Organization's surrejoinder of 2 March 2009;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. Facts relevant to this case are set out in Judgment 2616, delivered on 7 February 2007, in which the Tribunal quashed the Director-General's decision to terminate the complainant's contract with effect from 20 December 2002. As a result, the complainant was considered to have continued in employment. Since the complainant had reached the statutory retirement age on 18 March 2004, the Tribunal ruled that UNESCO should pay him "his salary and all related benefits, including pension entitlements – for the period from the date of his

termination, namely 20 December 2002, to the date on which he would have retired but for his termination, namely 18 March 2004 – together with compound interest at the rate of 8 per cent per annum”. The Tribunal specified that the Organization was entitled to set off against this amount any earnings the complainant had received in that period as well as any amounts paid by the Organization, pursuant to the Staff Rules governing payment upon termination. It also awarded the complainant costs in the amount of 1,000 euros.

By letter of 16 April 2007 the complainant was informed that, pursuant to the above-mentioned judgment, UNESCO had paid him 179,818.45 United States dollars in salary and accrued annual leave, together with interest, as well as costs. On 24 September he wrote to the Administration enquiring inter alia about the payment of his pension benefits. The Bureau of Human Resources Management informed him on 30 November 2007 that the Pension and Insurance Section had submitted the payment instruction to the United Nations Joint Staff Pension Fund (UNJSPF) in Geneva. It added that the latter was responsible for taking the necessary steps to effect the payment.

By a letter of 18 February 2008, which is the impugned decision, the UNJSPF notified the complainant that his retroactive pension benefits had been paid on 11 February 2008.

B. The complainant contends that UNESCO failed to execute Judgment 2616 properly and in a timely manner. He submits that it delayed, either by malice or inefficiency, the payment of his pension benefits for over a year, which resulted in a financial loss for him. The value of the dollar fell by approximately 25 per cent in relation to that of the euro in the period between the delivery of Judgment 2616 and the payment of his pension benefits. Since he resides in France, he has suffered a loss of income. He also argues that due to the delay in paying his pension benefits he was prevented from making the financial investments he had planned.

He further alleges that the Organization did not implement Judgment 2616 with due diligence and in full transparency, as required by the Tribunal’s case law. He asserts that the defendant delayed by

more than two months the payment of the amount owed to him in salary, accrued annual leave and costs, that it did not keep him informed as to the processing of the payment of his pension benefits and that it did not give him reasons for the delay in paying them. Moreover, UNESCO did not submit in a timely manner the information needed by the UNJSPF and the actuary to proceed with the calculation of his pension benefits. He adds that the UNJSPF Office in Geneva did not answer his e-mails or phone calls. Lastly, he alleges that he has been the victim of a pattern of harassment.

The complainant seeks moral and punitive damages for “contempt [of] the Tribunal’s Judgment 2616” and harassment, as well as a “public announcement of UNESCO’s bad faith”. He also claims material damages and costs, and requests that the Tribunal order an investigation to find the person or persons responsible for unduly delaying the payment of his pension benefits so that disciplinary action may be taken against that or those persons.

C. In its reply UNESCO contends that the complaint is not about the execution of Judgment 2616 as such and is therefore irreceivable. It concerns in fact the alleged prejudice resulting from the time which elapsed before the Fund paid the complainant the pension benefits owed to him pursuant to that judgment. Thus, not only is the complaint directed against the UNJSPF, which cannot be a party before the Tribunal as it has not recognised its jurisdiction, but also pertains to a matter which falls outside the Tribunal’s competence. The defendant asserts that it executed Judgment 2616 with diligence and in a timely manner and that it discharged its obligation to pay the pension contributions it owed to the Fund. Some time was necessary to calculate the salary, benefits and pension contributions it owed the complainant because his case was complicated. Indeed, he had already begun to draw his pension benefits from the UNJSPF prior to the delivery of Judgment 2616; consequently, UNESCO had to consult the Fund to find out the additional amount it had to pay in order to bring the complainant’s account to the level at which it would have stood had he remained in service until he reached the statutory retirement age. This calculation had to be performed by an actuary, who needed to

know the final pensionable remuneration rate applicable to the complainant, but the Organization had to determine the additional salary and benefits it owed him, pursuant to Judgment 2616, before it could provide the actuary with that information. On 9 March 2007, that is to say less than a month after it had received Judgment 2616, UNESCO held a meeting with officials of the UNJSPF, and on 12 March it issued the document needed to ascertain the final pensionable remuneration rate applicable to the complainant. By 20 April it had forwarded all necessary information to the Fund. It consequently considers that the payment of the salary and benefits was made in due time and that the calculation needed to pay the complainant's pension benefits was carried out within a reasonable time frame. It adds that it was informed only on 20 July 2007 of the alternative amounts to be paid to the Fund depending on the complainant's decision concerning the modalities of payment of his pension benefits.

The defendant stresses that the UNJSPF is the only body authorised to manage and disburse benefits to its participants. UNESCO is therefore not in a position to give reasons for the alleged delay in dealing with the payment of the complainant's pension benefits. It draws attention to the fact that, by a letter of 18 February 2008, the Fund informed the complainant that, in accordance with its Regulations and Rules, actuarial services had to be provided by its actuary and that the update of his benefit entitlements had given rise to many exchanges between the Fund and the actuary, which had proved time-consuming.

The Organization submits that the complainant has not established a causal link between the manner in which it executed Judgment 2616 and the alleged financial loss resulting from the fluctuation in the exchange rate between the dollar and the euro. Nor has he provided any evidence to support his allegation that the value of the dollar fell by approximately 25 per cent against that of the euro and that his investments were compromised. His request for damages should therefore be rejected. Further, the defendant rejects the allegation of harassment, recalling that the Tribunal has already

awarded him compensation for any wrongdoing in relation to the termination of his contract.

Relying on the case law, UNESCO argues that a claim which aims at imposing sanctions on officials responsible for alleged “victimisation” must be dismissed. In accordance with Article VIII of its Statute, the Tribunal may only order the rescinding of the decision impugned or the performance of the obligation relied upon; if that is not possible or advisable, it shall award the complainant compensation for the injury caused to him. Consequently, the complainant’s claims for a “contempt citation”, a “public announcement of UNESCO’s bad faith” and an “investigation” should be dismissed.

D. In his rejoinder the complainant reiterates his pleas. He contends that, in light of the e-mail of 20 July 2007 submitted by the defendant, both the UNJSPF and UNESCO are responsible for the delay in paying his pension benefits.

He explains that when he was asked to choose the mode of payment he was pressured to do so and that, at that time, his state of health did not enable him to make an informed decision.

The complainant expands on his claims, asking that his pension benefits be calculated *de novo* and that he be fully informed of the options available to him with regard to their payment.

E. In its surrejoinder the Organization maintains its position. It reiterates that a complaint cannot be brought against the UNJSPF since the latter has not recognised the jurisdiction of the Tribunal. In its view, the complainant shows bad faith in asking that his pension benefits be calculated anew. He was given the choice as to the mode of payment and his pension benefits were paid according to the mode he had elected.

## CONSIDERATIONS

1. In Judgment 2616 the Tribunal decided that the Organization should pay the complainant “his salary and all related benefits, including pension entitlements – for the period from the date of his

termination [...] to the date on which he would have retired but for his termination”, plus compound interest and costs.

2. The complainant now introduces an application for execution, claiming that UNESCO and the UNJSPF, of which the complainant was a participant before Judgment 2616 was rendered, failed to pay him his pension entitlements promptly, thereby causing him financial loss. He makes several claims for damages.

3. In addition to his application for execution of Judgment 2616, the complainant asks that the UNJSPF be added as a co-defendant in this proceeding and that it be held jointly responsible with UNESCO for the consequences stemming from the delay in payment of the pension benefits.

This request is rejected. The UNJSPF is not subject to the Tribunal’s jurisdiction and, therefore, cannot be made a party to this proceeding. As well, even if the Fund were subject to the Tribunal’s jurisdiction, the proceeding concerns the execution of a judgment against UNESCO and not the Fund.

4. Judgment 2616 was made public on 7 February 2007; notice was sent to the Organization on 8 February and was received by the Organization’s Office of International Standards and Legal Affairs on 14 February. On 12 March 2007 UNESCO wrote to the Fund, requesting it to indicate the amount of additional pension contributions that it would be required to pay, in accordance with the UNJSPF Regulations in execution of the Tribunal’s judgment.

5. On 16 April 2007 UNESCO paid the complainant his salary and all related benefits, together with interest.

6. As for retroactive adjustment and actuarial calculations of the complainant’s additional pension benefits, the Fund asked the Organization for further information which was necessary in order for it to process the request; that information was provided by 20 April

2007. On 20 July the Fund provided UNESCO with a calculation of the amounts to be paid by the latter, in the event the complainant chose full retirement or, alternatively, partial retirement with one-third lump sum, and asked the Organization to confirm the complainant's choice as to the mode of payment. On 25 July the Organization requested the complainant to submit new payment instructions. The complainant chose partial retirement with one-third lump sum and he signed the relevant forms on 16 August 2007. The Organization forwarded them to the Fund without delay.

7. On 23 August 2007 UNESCO paid the Fund the corresponding amount. On 30 November 2007 it informed the complainant that for his new pension payment it was now for the UNJSPF "to take the necessary steps". The Fund informed the complainant on 18 February 2008 of his retroactively adjusted pension benefits and explained the reasons for the delay in calculating them.

8. Thereafter, the complainant expressed to the Organization his concern about what he considered to be a delay in the adjustment of his pension benefits, which the Organization conveyed to the UNJSPF by letter of 29 August 2008. On 4 September the Fund provided details on the process that had been followed for the retroactive adjustment and actuarial calculation of the complainant's additional pension benefits. It noted *inter alia* that his existing pension had not been interrupted while such calculations were being made and that he had already been informed by the UNJSPF's letter of 18 February 2008 that his case called for the retroactive adjustment of his pension benefits, which required careful consideration.

9. It is evident that the Organization acted with reasonable diligence in fulfilling its duties according to Judgment 2616.

## DECISION

For the above reasons,  
The application is dismissed.

In witness of this judgment, adopted on 29 October 2009, Ms Mary G. Gaudron, President of the Tribunal, Mr Agustín Gordillo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2010.

Mary G. Gaudron  
Agustín Gordillo  
Dolores M. Hansen  
Catherine Comtet