

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

O.-W. (No. 4)

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

(Application for interpretation and execution)

124th Session

Judgment No. 3822

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms E. O.-W. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter “the Global Fund”) on 8 December 2015, which is an application for interpretation and execution of Judgment 3507, the Global Fund’s reply of 19 February 2016, the complainant’s rejoinder of 5 April and the Global Fund’s surrejoinder of 10 June 2016;

Considering Article II, paragraph 5, of the Statute of the Tribunal;
Having examined the written submissions;

CONSIDERATIONS

1. In a letter of 30 May 2011, the complainant, an employee of the Global Fund who had been placed on sick leave and sought recognition of her disability, was informed of the decision to grant her a 50 per cent permanent disability benefit which, under the insurance contract concluded by the Global Fund, would result in payment of a lump sum benefit under Article 15 of the contract and a continuing disability benefit under Article 16 thereof.

2. In Judgment 3507, delivered in public on 30 June 2015, the Tribunal, ruling on the complainant’s third complaint, found that the

Global Fund was responsible for the deterioration in the complainant's state of health. Under point 2 of the decision in that judgment, it therefore ordered the Global Fund to pay the complainant financial compensation for the injury resulting from her disability, plus interest thereon, and to adopt the requisite measures to restore her pension rights as indicated under consideration 18. That consideration, in pertinent part, reads as follows:

“The complainant, who has held an appointment of continuing duration since 1 January 2009, would have received a full salary ever since the beginning of the period covered by her disability benefit had she not been completely unable to perform her duties owing to her state of health. Since she has been awarded a benefit at its present rate of 50 per cent until 30 April 2016, pending a further medical examination, the Fund will be ordered to pay her the equivalent of the salary and all other emoluments which she would normally have received if she had actually performed her duties within the organisation during the period between 1 July 2011 and 30 April 2016, less any sums received by her as disability benefit.” (Emphasis added.)

3. In a letter of 4 August 2015, the Global Fund provided the complainant with details of the sums paid to her in execution of Judgment 3507. This letter showed that the Global Fund had deducted the sums corresponding to both the continuing disability benefit and the lump sum benefit from her salary and other emoluments.

In a letter of 3 September 2015, the complainant expressed her disagreement with the amount paid, on the ground that the lump sum benefit “was due to her under the Global Fund's insurance contract and her entitlement [remained]”. The Global Fund informed her on 8 October 2015 that it maintained its position, referring mainly to the English translation of the judgment in question.

4. That is the background against which the complainant asks the Tribunal to state whether the Global Fund was entitled to deduct the lump sum benefit from the compensation due to her in execution of Judgment 3507.

Although the complainant believed that she should file an application for interpretation to this end, the Tribunal observes that the application can also be regarded, to a large extent, as an application for execution.

Indeed, it is clear that in the complainant's mind, the main purpose of the application, apart from obtaining an interpretation of the judgment, is to secure full execution of the judgment, as witness her claims for payment of the balance of the award against the Global Fund that she considers due and for interest thereon.

5. According to the Tribunal's case law, an application for interpretation can ordinarily apply only to the decision in a judgment, and not to the grounds thereof. However, it is accepted that such an application can also refer to a ground when a decision refers expressly thereto (see Judgments 2483, under 3, 3271, under 4, and 3564, under 1). From that point of view, it is open to the complainant, in the circumstances of the case, to request interpretation of consideration 18 of Judgment 3507 to which, as has been said, the decision refers.

However, an application for interpretation is receivable only if the meaning of the judgment concerned is uncertain or ambiguous to such an extent that its execution is impossible (see, for example, Judgments 1306, under 2, 3014, under 3, or the aforementioned Judgment 3271, under 4).

6. In the present case, it is true that as Judgment 3507 was delivered in French and referred to an insurance contract existing in English only, the Tribunal inevitably had to translate the terms used in the contract, which was a potential source of uncertainty. However, a perusal of the judgment shows that the fifth paragraph of the opening summary of the facts includes an analysis of the aforementioned letter of 30 May 2011 showing clearly that the terms "lump sum benefit", within the meaning of Article 15 of the contract, and "continuing disability benefit", within the meaning of Article 16 thereof, were respectively translated by the Tribunal as "*somme forfaitaire*" and "*rente d'invalidité*". The French version of these terms is, moreover, used several times with the same meaning in the rest of the judgment.

As far as consideration 18 is concerned, the reference to the "*rente d'invalidité*" to be deducted from the award to the complainant can therefore only be understood as referring to the continuing disability benefit alone, and not, as the defendant contends, to the combination of

that allowance and the lump sum benefit. Moreover, the French term “*rente*” refers, in its ordinarily recognised sense, to an allowance paid periodically. The reference made in the same consideration to “the beginning of the period covered by [the] disability benefit” confirms, should doubt remain, that only the allowance received by the complainant in that form was meant here, to the exclusion of the “lump sum benefit”.

7. It is true that the stipulation set out in consideration 18, underlined in the quotation above, whereby the sum of the award to the complainant is to be calculated “*déduction faite des sommes perçues par l’intéressée au titre de cette rente d’invalidité*”, was translated in the English version of the judgment as “less any sums received by her as disability benefit”, which could indeed be understood to include the lump sum benefit. However, Judgment 3507 having been delivered in French, as stated above, only the original French version is authoritative (see, for example, Judgment 2880, under 9). In line with the Tribunal’s usual practice, a statement expressly recalling that caveat was inserted at the top of the published English version of the judgment. In considering that it could refer to the English version of the judgment as a basis for its own interpretation of the consideration in question, the Global Fund hence overlooked the primacy granted to the original version of a judgment of the Tribunal.

8. Although an analysis of the wording used in Judgment 3507 suffices to settle the matter under discussion, the Tribunal emphasises that its decision not to deduct the lump sum benefit from the award to be paid by the Global Fund was deliberate. Unlike the continuing disability benefit, the lump sum benefit is not explicitly defined in the insurance contract as a replacement for income and related social insurance contributions. The Tribunal therefore saw fit to preserve that benefit to the complainant despite the compensation for her loss of pay.

The defendant’s submission that the Tribunal’s approach results in the complainant being granted compensation greater than the loss caused by her injury is, in any event, without real merit since it takes into consideration only the economic aspect of that injury whereas the

injury suffered includes other types of injury, in particular the inherent difficulties of living with disability.

Furthermore, such a discussion may not properly be re-opened in the context of an application for interpretation or execution, the purpose of which is plainly not to seek a new judgment on the initial dispute.

9. The Tribunal considers, in the light of what has been stated above, that the meaning of the authoritative version of Judgment 3507 is not uncertain or ambiguous to such an extent that the execution thereof is impossible.

In line with the case law recalled under 5, above, it follows that the complainant's application must be dismissed as irreceivable to the extent that it seeks the interpretation of that judgment.

However, it also follows that since the Global Fund has not properly discharged its obligations with regard to calculating the sums due to the complainant, the application must conversely be allowed to the extent that it seeks the execution of the judgment.

It should be recalled that the Tribunal's judgments, which according to Article VI of its Statute are "final and without appeal" and which have *res judicata* authority, are immediately operative (see, for example, Judgments 3003, under 12, and 3152, under 11). As they may not later be called into question except when an application for review is allowed, they must be executed by the parties as ruled (see, for example, Judgments 3566, under 6, and 3635, under 4).

10. In the present case, it ensues from what has been stated under 6, above, that the Global Fund was wrong to deduct a sum equivalent to the lump sum benefit from the award to be paid under point 2 of the decision in Judgment 3507. The defendant must accordingly pay the complainant the sum in question, in the undisputed amount of 256,732.50 Swiss francs, within 30 days of the public delivery of this judgment.

The Tribunal further observes that this sum should have been paid as part of the comprehensive payment effected by the Global Fund to the complainant on 4 August 2015 in execution of Judgments 3507 and 3506, the latter concerning the complainant's first and second complaints.

In these particular circumstances, it is therefore appropriate to order the Global Fund to pay her interest on the aforementioned sum at the rate of 5 per cent per annum from that date, as she requests.

11. As she was obliged to file the present application in order to secure full execution of Judgment 3507, the complainant is entitled to costs, which the Tribunal sets at 3,000 Swiss francs.

DECISION

For the above reasons,

1. The Global Fund shall pay the balance of the award stipulated in point 2 of the decision in Judgment 3507 and interest thereon, as indicated in consideration 10, above.
2. It shall pay the complainant 3,000 Swiss francs in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 25 April 2017, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ