

FIFTY-FIRST ORDINARY SESSION

In re DICANCRO (No. 3)

(Execution of Judgment No. 480)

Judgment No. 569

THE ADMINISTRATIVE TRIBUNAL,

Considering Judgments Nos. 427 and 480;

Considering the complainant's letter of 11 May 1982, confirmed by telegram of 27 May, referring the case to the Tribunal in accordance with paragraph 4 of Judgment No. 480;

Considering the complainant's telegram of 2 September and the Pan American Health Organization's telegram of 3 September accepting the appointment of the actuarial expert;

Considering the complainant's letter of 9 September and the PAHO's letters of 20 September and 21 October providing at the Tribunal's request questionnaires to be addressed to the expert;

Considering the further information provided at the expert's request by the complainant on 5 January 1983 and by the PAHO on 24 February and 15 April;

Considering the expert's report of 8 June;

Considering the complainant's comments of 1 August on the report and the PAHO's observations of 30 August on those comments;

Considering the expert's statement of 3 October in reply to the parties' comments and observations on her report;

Considering the claims to costs filed by the complainant on 21 October and the PAHO's comments thereon of 2 November 1983;

Considering Article II, paragraph 5, of the Statute and Article 11 of the Rules of Court of the Tribunal;

Considering the written evidence;

CONSIDERATIONS:

1. The expert appointed by the Tribunal under Article 11 of the Rules of Court has delivered a report to the Tribunal which calculates the complainant's loss as specified in paragraph 4 of Judgment No. 480 and as at 31 December 1983 at 78,322 United States dollars. The Organization accepts this figure. The complainant criticises the report, first, on the ground that it is based on assumptions which produce an inequitable result and, second, on the ground that it contains mathematical errors. The effect on the figures of the second

ground, if it were substantiated, would be small, while the effect of the first ground would be substantial. This is illustrated by the actuarial calculation, as required by the said paragraph 4, of the value of the pension which the complainant would have received if he had retired on 30 June 1984. The expert fixed it at \$378,963, while the complainant contends, on the basis of figures supplied by an American firm of consulting actuaries, that it should be fixed at \$650,552. In the expert's figure the actuarial valuation assumptions are expressed by a value factor of 14.717, while in the latter figure the factor is 24.1721; this difference in the factors accounts almost entirely for the large difference between \$378,963 and \$650,552.

2. The expert took the figure of 14.717 as the factor applied in such circumstances by the United Nations Joint Staff Pension Fund. The complainant argues that the UNJSPF factor, while satisfactory in its context, ought not to be applied to a case of wrongful dismissal. He contends that he as the injured party should not have to bear the risk

of an erroneous assumption diminishing the amount of compensation and that the Tribunal should "arrive at a reasonable and equitable amount which will place the complainant at least in the same position as he would have been if he had not been wrongfully dismissed". This is certainly the general objective in the assessment of compensation for wrongful dismissal. But it does not mean that all assumptions are to be made in favour of the injured party so as to avoid the risk that he may suffer from an erroneous assessment. Under this particular item of damage, which is only one of several in a claim for compensation for wrongful dismissal, the complainant is being compensated for the loss of a larger pension. The size of the larger pension would not be affected by the manner in which the complainant was forced to leave the Organization nor should the compensation be.

3. In the making of a calculation of any complexity there are likely to be points at which a choice between two methods has to be made. The comparatively slight differences between the calculations made by the expert and those made by the complainant's actuaries are due to the fact that at some points the latter do not share the expert's preference. This does not fault the calculation.

4. The expert's fee, amounting to 6,500 Swiss francs, has been paid by the International Labour Organisation. Since the expert's inquiry was a step in assessing the amount of the compensation for which the defendant Organization is liable, the cost of the inquiry must be borne by the Organization.

DECISION:

For the above reasons,

1. The Organization shall pay to the complainant on or before 31 December 1983 the sum of 78,322 United States dollars.
2. The Organization shall reimburse the International Labour Organisation with the sum of 6,500 Swiss francs.
3. The complainant's application for costs is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 20 December 1983.

André Grisel

Jacques Ducoux

Devlin

A.B.Gardner