

FIFTEENTH ORDINARY SESSION

***In re* KISSAUN**

(Fixing of Compensation)

Judgment No. 88

THE ADMINISTRATIVE TRIBUNAL,

Considering the Memorandum dated 25 March 1965 by which Mr. Kissaun, in default of any settlement between the parties, prays the Tribunal to fix the amount of compensation payable to him by the World Health Organization under an earlier judgment of the Tribunal, the reply of the Organization dated 28 April 1965, the rejoinder of the complainant dated 13 May 1965 and supporting documents, and the observations of the Organization on the said rejoinder and its annexes set out in a letter to the Registrar dated 9 June 1965;

Considering Article VIII of the Statute of the Tribunal;

Considering Judgment No. 69, delivered by the Tribunal on 11 September 1964;

Considering the documents in the dossier, from which the following facts emerge:

A. In its Judgment of 11 September 1964, quashing the decision not to confirm the appointment of the complainant at the end of the probationary period on the grounds of failure to comply with the recognised procedure and infringement of the right to be heard, the Tribunal invited the Organization to reopen the case, to enable the complainant to exercise his rights, and to consider whether he should be reinstated. At the same time it reserved the complainant's right to claim compensation whether or not he was reinstated. It further provided that the complainant could at the most only claim "compensation for the prejudice effectively suffered from the time of the coming into force of the decision complained of up until the date of notification of the decision to be taken, or eventually, if this day is sooner, until the day when his appointment would normally have ended".

B. By letter of 15 October 1964 the Organization offered to pay the complainant compensation, explaining the reasons for which was considered inadvisable to reopen the case with a view to his possible reinstatement. The complainant having challenged the basis on which the compensation was assessed, maintaining that it was payable even if, as he desired, steps were taken with a view to his possible reinstatements and without prejudice to additional compensation in the event of non-reinstatement, the Organization on 3 December 1964 offered him the sum of U.S. \$10,120.43, representing his salary for the period between the premature termination of his appointment and the date when his appointment would normally have ended, including allowances and benefits, plus interest at 4 per cent. for the period between 1 June 1963, date of the normal termination of his appointment, and 11 September 1964, date on which the above-mentioned judgment was delivered. It was also specified that this sum was offered in final settlement of all the complainant's rights, and that if he insisted on the reopening of hearings on his case the offer would be withdrawn and any compensation would be fixed thereafter in the light of the results or such hearings. No settlement having been reached the complainant requested the intervention of the Tribunal, which laid down the procedure for consideration of the dispute.

C. In the final version of his conclusions, the complainant recognises that he has nothing to gain from a fresh investigation and confines himself to claiming, besides a satisfactory certificate of service, compensation comprising his salary, including allowances and benefits, for the period between the premature termination of his appointment and the date of its normal termination, plus one salary step to which he claimed that he would have been entitled if he had remained in the Organization's service, interest at 4 per cent. on the amount thus computed from the normal date of expiry of his appointment to the date of payment of compensation and additional compensation of \$20,000 for damage to his health resulting from a nervous breakdown due to the illegal treatment he had received, entailing loss of earnings as well as suffering and expense. The Organization opposes these claims and prays that payment of the sum offered by it on 3 December 1964 should be ratified as constituting full settlement of all its obligations under Judgment No. 69 of 11 September 1964.

CONSIDERATIONS:

1. On the principle of compensation:

Both parties having agreed to the settlement of the complainant's claims by means of the payment of compensation, the Tribunal's task is confined to fixing the amount of such compensation. In any event, the complainant is entitled only to compensation for the injury actually caused to him by the rescinded decision.

2. On the salary step on which the compensation is computed:

The Organization has offered the complainant compensation computed on the basis of Grade P.4, Step 1. The complainant, on the other hand, claims that as a result of the quashing of the decision to terminate his appointment he is deemed to have remained in the service of the Organization until 31 May 1963, that in that event he would normally have received the salary applicable to Grade P.4, Step 2, from 31 May 1962 until 31 May 1963, and that he is therefore entitled to compensation computed on this basis for the period in question. However, once he has withdrawn his demand for a rehearing in regard to the circumstances of the termination of his appointment, the complainant can hardly claim that if he had remained in the Organization's service until 31 May 1963 he would necessarily have received an increment on 31 May 1962. On the contrary, it is by no means improbable that at the latter date the Organization would have extended the complainant's probationary period under article 440, paragraph 1 (b) of the Staff Regulations without increasing his salary. There are therefore no grounds for departing from the basis of compensation adopted by the Organization.

3. On the claim for supplementary compensation of \$20,000:

In addition to a sum corresponding to his salary from 15 September 1962 to 31 May 1963, the complainant also claims a sum of \$20,000 as additional compensation for the psychological disturbance which he claims to have suffered as a result of his dismissal. It is not inconceivable that an official might be so deeply affected by the termination of his appointment as to fall ill and to become incapacitated for work for a certain length of time. In the present case, however, the complainant could in any event have expected the termination of his appointment on 31 May 1963, and therefore, failing quite exceptional circumstances, he has no grounds for maintaining that his dismissal led to the deterioration of his health and to incapacity for work after that date. The existence of any such circumstances cannot be deemed to be established by the evidence submitted by the complainant. In particular, they do not appear to be sufficiently established by the statements of the psychiatrist who attended the complainant in June 1963 and whose comments on the origin of the complainant's alleged illness are based on conjecture rather than on observed facts. It follows that in offering the complainant compensation equal to the salary to which he would have been entitled from 15 September 1962 to 31 May 1963, without any deduction on account of possible earnings during that period, the Organization has taken full account of the injury caused to him by the loss of his employment. Moreover, under the strict terms of Judgment No. 69, the complainant would be entitled only to compensation for the injury suffered by him up to 31 May 1963, and therefore his claim for higher compensation should be rejected without further consideration on this ground alone.

4. On the rate of interests:

There is agreement between the parties that the complainant is entitled to interest on the compensation awarded at 4 per cent. from 1 June 1963. They are not agreed, however, as to the date up to which interest is due. It follows from the considerations set out above that the Organization's offer of 3 December 1964 was satisfactory as a whole. In the Tribunal's view, even if it was slightly inadequate in respect of interest it was liberal in respect of capital; the complainant was therefore wrong to reject this offer and has accordingly no grounds for claiming supplementary compensation.

5. On the issue of a certificate:

The certificate issued to the complainant on 9 August 1965 deals with the nature and length of his service and with his abilities and conduct. It complies fully with the requirements of article 995 of the Staff Regulations and does not need to be supplemented, particularly as the complainant himself has not requested any amendment of it although it has been in his hands for nearly three months.

On these grounds,

DECISION:

1. The Tribunal records the offer of the Organization to pay the complainant a sum Of U.S. \$10,120.43 including interest, such payment constituting the fall discharge of the obligations arising out of Judgment No. 69 dated 11 September 1964.

2. The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 6 November 1965 by Mr. Maxime Letourneur, President Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

M. Letourneur

André Grisel

Devlin

Jacques Lemoine