

NINETIETH SESSION

In re Banda (No. 2)
(Application for execution)

Judgment No. 2016

The Administrative Tribunal,

Considering the application for the execution of Judgment 1872 filed by Mr Chemuta Divy Banda on 25 January 2000 and corrected on 23 March, the reply of the Organisation for the Prohibition of Chemical Weapons (OPCW) of 6 June, the complainant's rejoinder of 26 July and the Organisation's surrejoinder of 31 August 2000;

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

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

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

A. The complainant, a national of Cameroon who was born in 1946, was dismissed by the OPCW with effect from 16 December 1997. In Judgment 1872, delivered on 8 July 1999 on his first complaint, the Tribunal set aside that decision and decided, among other points: "The Organisation shall pay the complainant an amount equal to the salary and benefits that he would have received had he remained in service at his grade and step between the date of the termination of his appointment and 23 May 2000."

On 24 July 1999 the complainant, who had returned to live in Cameroon, wrote to the Director-General seeking execution of the judgment. By a letter of 14 September, the Head of the Human Resources Branch informed the complainant of the amounts that would be paid to him under various heads. He indicated that home leave and education grant benefits were paid on the basis of costs actually claimed and attached the appropriate claim forms. On 21 October 1999 the complainant sent in to the Human Resources Branch the claim forms for education grant benefits for his five children for the school years 1998-1999 and 1999-2000 and the home leave to which he would have been entitled in 1999. He stated that "the requests [for the education grant] are based on the total of the final settlement for the 1997/1998 school year". On 3 February 2000 the Organisation informed the complainant that it refused to pay the benefits requested.

On 4 April the complainant indicated that he had requested the schools in Cameroon and in England, in which his children were studying, to certify their attendance. However, he reiterated his position that the Organisation should reimburse him the education costs on the basis of the amounts paid for the 1997-1998 school year. In a letter of 27 April, the Head of the Human Resources Branch informed him that his education grant claims had been processed on the basis of actual costs and that the same would apply to his home leave claim. On 25 May 2000 he was paid the education grant benefits.

In the meantime, on 25 January 2000, the complainant had filed the present application with the Tribunal challenging the implied rejection of his settlement claim dated 21 October 1999.

B. The complainant recalls that the Tribunal decided in Judgment 1872 that he should be paid "an amount equal to the salary and benefits that he would have received had he remained in service". He asserts that he is claiming no more than that: had he remained in service, his children would have continued their schooling in the same schools as in the 1997-1998 school year and he and his family would have taken home leave in 1999. He asks the Tribunal to order the payment of the education grant for his children and home leave as if he had remained in service. He also claims 5,000 Dutch guilders in costs.

C. In its reply the OPCW argues that the application for execution has no basis in law and is consequently irreceivable. The education grant is paid on the basis of actual costs as certified by the school. "It cannot be some hypothetical amount of what the school costs might have been." Nothing in the decision of Judgment 1872 says that the qualifying conditions for the payment of that benefit did not have to be met. If the complainant's reasoning were to be accepted, the grant would no longer be for educational expenses, but would be more akin to damages. The OPCW says that the same applies to home leave: only the actual cost is reimbursable. Any other solution would be contrary not only to the rules in force but to the purpose of home leave. Once again, it would amount to paying damages. In support of its arguments, the OPCW cites Judgments 1588 (*in re* Tuffuor No. 2) and 1873 (*in re* Amira No. 2).

The OPCW adds that the complainant accepted the education grant payments that it had calculated on the basis of the claim forms he filled in; therefore, his application for review has become frivolous and should be dismissed.

D. In his rejoinder the complainant recognises that the amounts due to him must be based on actual costs, but he considers that these amounts cannot be lower than those he would have received had he remained in service. He explains that, although he allowed his children's schools to certify the school costs, he has always informed the OPCW of his view that it should pay him the grant on the basis of the costs for 1997-1998. He denies accepting the amounts calculated by the OPCW. He submits that his home leave travel claim was submitted in time and that lump-sum payment, which he opted for, is not based on actual costs. In his view, the amount awarded to him by the Tribunal in Judgment 1872 did include compensation for material and moral injuries. He adds that the context of the judgments cited by the OPCW was different from that of the present case.

E. In its surrejoinder the OPCW presses its pleas and reiterates its claims.

CONSIDERATIONS

1. A former staff member of the Organisation for the Prohibition of Chemical Weapons (OPCW), the complainant, who is a national of Cameroon and currently lives in Yaoundé, was dismissed from his post as Head of the Human Resources Branch in conditions which were found to be unlawful by the Tribunal. In Judgment 1872, delivered on 8 July 1999, the OPCW was ordered to pay him an amount equal to the salary and benefits that he would have received had he remained in service between the date of the termination of his appointment and 23 May 2000. On 14 September 1999 the OPCW informed the complainant that 382,134.78 guilders were being transferred to his bank account and that amounts corresponding to his salaries and benefits for the period September 1999 to May 2000 would be paid monthly. As to education grant benefits for his children and home leave, it explained that payments could be made only on the basis of actual costs; he should therefore fill up the appropriate claim forms. The complainant did so and sent them in to the OPCW on 21 October 1999. He calculated his claim to payment of the education grant for his children on the basis of the amounts paid when he was still in the OPCW's service and living in the Netherlands, and his claim regarding home leave, on the basis of what he would have received had he remained in service. The OPCW agreed to take into account the actual costs indicated by the complainant for his children, whether they had continued their schooling in Cameroon or abroad, but refused to calculate the amount of the grant on the basis of the cost that would have been incurred had his children stayed in the schools they attended during the 1997-1998 school year. It also refused to pay him an allowance for the home leave that he had not actually taken, since he had returned to live in Cameroon after leaving the OPCW. The complainant is lodging an application for execution on these two points.

2. As emphasised by the OPCW, the applicable interim Staff Rules provide that the education grant is calculated on the basis of expenses actually incurred. The complainant cannot therefore claim grants calculated on the hypothetical basis of the costs that would have been incurred had he remained in service. As he is unable to prove that the costs were actually incurred, the complainant cannot object to the favourable manner in which the OPCW responded to his claims on the basis of the certificates provided, for which it sent him two cheques on 25 May 2000 for 25,642.32 and 23,488.92 guilders, respectively.

3. The claim in respect of home leave cannot succeed as the complainant, who had returned to his country of origin and received the repatriation grant to which he was entitled, did not take any home leave. Any refund on this count would consequently be a fictitious amount, as found in Judgment 1588, and the OPCW therefore rightly considered that he was not entitled to that benefit.

4. The conclusion is that the OPCW executed Judgment 1872 properly. The application for execution therefore fails, there being no need to rule on the Organisation's objection to receivability.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 9 November 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 31 January 2001.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet