EIGHTY-EIGHTH SESSION

In re Schopper (No. 2)

(Application for interpretation and execution)

Judgment 1904

The Administrative Tribunal,

Considering the application for the interpretation and execution of Judgment 1629 filed by Miss Doris Schopper on 30 September 1998, the reply of 17 December 1998 from the World Health Organization (WHO), the complainant's rejoinder of 12 January 1999 and the WHO's surrejoinder of 23 March 1999;

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

Having examined the written submissions:

CONSIDERATIONS

1. This is an application for interpretation and execution of Judgment 1629 in which the Tribunal set aside a decision to terminate the complainant's service on the grounds of abolition of post. This judgment formed one of a series of similar cases (Nos. 1624 to 1631) concerning former staff of the Global Programme on Aids (GPA). The relief granted was either reinstatement as set out in paragraph 24 of the judgment or the payment of damages as set out in paragraph 25 and in either case the application of the reduction-in-force procedure.

2. The Organization opted to pay damages in accordance with paragraph 25.

3. The complainant does not contest the way in which the reduction-in-force procedure was applied; she does contest the fact that in calculating the damages to which she was entitled, the Organization:

(i) did not include payment of contributions to the United Nations Joint Staff Pension Fund and the Staff Health Insurance for the period from 1 January 1996 to 24 July 1998; and

(ii) did not deduct from her occupational earnings the amount of her contributions to an alternative health insurance plan during the same period.

4. The complainant argues that in paragraph 24 of Judgment 1629 the Tribunal held that she was entitled to "reinstatement with payment of salary and allowances and benefits due under her contract", which included the payment of contributions to the Pension Fund and the Staff Health Insurance. She submits that her participation in the reduction-in-force exercise implied that she was still a staff member and the Organization recognised this in paying three months' salary in lieu of notice at the unsuccessful conclusion of the exercise. She cites Judgments 1374 (*in re* González and others) and 1748 (*in re* Limage No. 2) in support of her contention.

5. The Organization argues that since it exercised the option of paying damages, separation took place on 1 January 1996 and the complainant then ceased to be a staff member. Only if the complainant had actually been reinstated would she have been entitled to continue to be a participant in the Pension Fund and the Staff Health Insurance. Taking part in the reduction-in-force exercise and payment in lieu of notice did not mean that the complainant had been reinstated.

6. The cases cited are not in point. In neither of those cases were the organisations offered the option of paying damages in lieu of reinstatement.

7. A similar claim was made in Judgment 1797 (*in re* Weiss No. 2), a case that is like the GPA ones. In that instance the Tribunal said, under 13, that it "did not order the Organization to reinstate the complainant in the Pension Fund or health insurance plan since it did not reinstate him in employment".

8. The Tribunal is satisfied that the same considerations apply in the present case. Once the Organization exercised the option of paying damages, it meant that separation took place on 1 January 1996 and the right to participation in the Pension Fund and the Staff Health Insurance no longer existed. Neither the reduction-in-force exercise nor payment in lieu of notice alters the fact that no reinstatement took place. Therefore, the complainant is not entitled to succeed in this claim.

9. The complainant claims to be entitled to be given credit for payments made to an alternative health plan pending the conclusion of the reduction-in-force exercise by deducting them from her occupational earnings. This claim is based on the premise that she was entitled to continuing membership of the Staff Health Insurance until 24 July 1998, which is incorrect.

10. No deductions were made from her salary for any contributions by her to the Staff Health Insurance. Therefore, she did not bear the cost of health insurance twice. This claim also fails.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

Michel Gentot
Mella Carroll
James K. Hugessen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 7 July 2000.