

EIGHTY-EIGHTH SESSION

In re Friel

(Application for interpretation and execution)

Judgment 1905

The Administrative Tribunal,

Considering the application for the interpretation and execution of Judgment 1629 (*in re Schopper*) filed by Mr Patrick George Friel on 27 October 1998, the reply of 26 January 1999 from the World Health Organization (WHO), the complainant's rejoinder of 23 February and the WHO's surrejoinder of 10 May 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. The complainant was an intervener in that case and, having been found to be in the same position in law and in fact as Miss Schopper, was entitled to benefit from that judgment, save as to costs.
2. Like Miss Schopper, the complainant claims that he, too, was entitled to payment of contributions by the Organization to the United Nations Joint Staff Pension Fund and the Staff Health Insurance.
3. For the same reasons as those set out in Judgment 1904 of this day (*in re Schopper No. 2*) he fails in this claim as he was never reinstated as a staff member and was therefore not entitled to continue his participation in the Pension Fund and the Staff Health Insurance.
4. The complainant suggests that the arguments advanced in his case are different from those in the case of Mr Weiss (Judgment 1797). He asks that the issues discussed be examined *ab initio*. He claims that Judgment 1629 required the Organization to treat the complainant - an intervener - as remaining in service until the reduction-in-force procedure was completed. This entailed paying contributions to the Pension Fund and the Staff Health Insurance until that period expired.
5. The complainant is mistaken. The arguments may differ but the principle is the same. Judgment 1629 gave the option to the Organization either to reinstate or to pay damages. Where damages were paid there was no reinstatement and, therefore, no question of ordering the payment of the claimed contributions.
6. In addition, the complainant claims that compensation should have been paid to him for the loss of home leave entitlement in 1995. He applied for home leave on 3 July 1995 for the period from 5 to 19 July 1995 and it was authorised on 5 October 1995. He says he did not find it possible to take home leave in the autumn of that year in view of his heavy work schedule.
7. The WHO says that on 3 July 1995 the complainant did not fulfil the condition in Staff Rule 640.3.2 that his service should be "expected to continue at least six months beyond the date of return from home leave or six months beyond the date of eligibility for home leave, whichever is later". However, it informed him orally that if he wished to travel in July it would exceptionally reimburse the cost if his contract was subsequently extended to 31 December. When the extension was granted in October 1995, the home leave which he requested to take in July was approved subject to proof of travel.
8. The Organization affirms that if the complainant had indeed taken home leave in July 1995 he could have claimed reimbursement for it. The WHO says it is under no obligation to pay compensation for home leave the complainant did not take and for which, therefore, he incurred no expense. Staff Rule 860 precludes the payment of cash to a staff member to compensate for failure to exercise a home leave entitlement.

9. In Judgment 1588 (*in re* Tuffuor No. 2), in circumstances where a decision to dismiss the complainant was set aside, the Tribunal refused a claim for compensation for home leave which was not taken. It said, under 6, that there was no question of refunding fictitious expenditure.

10. Accordingly, the complainant is not entitled to any compensation for home leave which he did not take.

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