

## EIGHTY-EIGHTH SESSION

### *In re Zaunbauer (No. 2)*

(Application for execution)

Judgment 1921

The Administrative Tribunal,

Considering the application for the execution of Judgment 1782 filed by Miss Christl Zaunbauer on 22 March 1999, the reply of 2 July from the United Nations Industrial Development Organization (UNIDO), the complainant's rejoinder of 13 August and UNIDO's surrejoinder of 15 October 1999;

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

Having examined the written submissions;

### CONSIDERATIONS

1. The complainant seeks full execution of Judgment 1782 delivered on 9 July 1998.
2. The complainant's appointment as a staff member of UNIDO was prematurely terminated on 28 June 1996 as a result of the Organization's substantial downsizing at that time. The Tribunal found the decision to terminate the complainant's appointment to be flawed, and in Judgment 1782 quashed it. The Tribunal then ordered reinstatement but "only up to January 1998, the month in which she qualified for early retirement". The Tribunal ordered that she be paid full arrears of salary, allowances and other benefits less any severance payments and occupational earnings she may have had. Before going on to deal with the questions of damages and costs, the Tribunal specifically ordered also that the complainant "shall be deemed for all purposes to have left on early retirement in January 1998 and be entitled to all benefits due upon such retirement".
3. It is manifest that in the quoted sentence the Tribunal was referring to UNIDO's voluntary separation programme which came into effect in January 1998. That programme offered significant benefits in the form of a "golden handshake" to long-term employees, such as the complainant had been, who voluntarily took early retirement.
4. In its execution of Judgment 1782 UNIDO, while paying all other sums due, has refused to give the complainant the monetary and other benefits she would have received if she had still been in its employ on 9 January 1998, when the programme was announced, and had then left voluntarily. While it does not dispute that she would otherwise have qualified for the voluntary separation programme it says she was not eligible since she did not apply to participate in it between 9 and 31 January 1998, the limit dates, and she did not have the approval of the Director-General to take early retirement in accordance with the programme.
5. These arguments are untenable. The complainant did not apply to take part in the voluntary separation programme between the limit dates because she could not; she had already been terminated by the Organization's own illegal actions as of 28 June 1996. The Organization simply cannot be heard to say that it did not approve the complainant's voluntary early retirement as of January 1998 when it had already improperly got rid of her.
6. It should be noted that paragraph 2 of UNIDO/DGB(M).78 bulletin dated 9 January 1998 describing the voluntary separation programme specified as follows:

"The conditions set out in this bulletin will apply equally to all staff members whose request for a voluntary separation has been accepted. No individual staff member will receive payments or benefits that will not also be granted to others under this programme who find themselves in a similar factual and legal position."

**The Tribunal holds that the Organization's own misconduct cannot be an excuse for not treating the complainant on the same basis as her fellow employees.**

**7. The terms of Judgment 1782 are clear and brook no pettifogging interpretation. The complainant was "deemed for all purposes" to have taken early retirement in January 1998 and to be "entitled to all benefits due upon such retirement". The voluntary separation programme sets out these benefits and the complainant was and is entitled to them.**

**8. The Tribunal will order again that the Organization do what it was ordered to do on 9 July 1998. All monetary sums due to the complainant shall bear interest from the latter date at 8 per cent per annum to the date of payment. The Organization shall also pay the complainant's costs in the amount of 2,000 United States dollars.**

## **DECISION**

**For the above reasons,**

**1. The Organization is ordered to grant the complainant all the benefits that she would have received had she taken voluntary early retirement in accordance with the Organization's voluntary separation programme. All sums of money payable to the complainant pursuant hereto shall bear interest at the rate of 8 per cent per annum from 9 July 1998 to the date of payment.**

**2. The Organization shall pay the complainant's costs in the amount of 2,000 United States dollars.**

**In witness of this judgment, adopted on 11 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**