

EIGHTY-EIGHTH SESSION

In re Kogelmann (No. 5)

(Application for execution)

Judgment 1923

The Administrative Tribunal,

Considering the application for execution of Judgment 1640 filed by Miss Edith Kogelmann on 13 January 1998 in the form of a brief from her counsel regarding the unsettled legal costs and other issues relating to her entitlements in her case against the International Atomic Energy Agency (IAEA), the Agency's reply of 20 March 1998, its further comments of 23 June 1998 on the answers which Miss Kogelmann's counsel provided to questions put to him by the President of the Tribunal in connection with her legal costs, the order dated 13 November 1998 from the President concerning those costs, the complainant's rejoinder of 22 June 1999 and the Agency's surrejoinder of 30 August 1999;

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

Having examined the written submissions;

CONSIDERATIONS

1. This application concerns the non-execution of point 5 of the decision in Judgment 1640 which was delivered on 10 July 1997.
 2. Before taking up the submissions on that matter the Tribunal will dispose of the submissions contained in the same brief relating to an application for the payment of legal fees which were dealt with in point 1 of the decision of that judgment. That point provides:

"The Agency shall pay the complainant the legal costs that she incurred and that were necessitated by the interlocutory order in Judgment 1373, the amount to be approved by the President of the Tribunal failing agreement between the parties."
 3. The President issued an order in respect of those costs, and only those costs, on 13 November 1998.
 4. The Agency submits that the President made a ruling thereby disposing of all the issues raised in the submissions and so they are *res judicata*.
 5. The jurisdiction of the President was limited to approving the amount of legal costs in the absence of agreement between the parties. Therefore, there is no question of the issues raised in the brief of 13 January 1998 (other than the matter of costs) being disposed of other than by a ruling of the Tribunal.
 6. Turning to the substantive claim, the complainant holds that the Agency has not fully executed point 5 of Judgment 1640. That point provides:

"The Agency shall grant her any pay entitlements and [Temporary Disability Insurance Plan] benefits arising out of her reinstatement in [sick leave] status, plus interest to be reckoned at the rate of 8 per cent a year from the due dates and up to the date of payment."
- The complainant says that she was on sick leave with no pay from 26 September 1992 to 31 March 1993.
7. The complainant paid 197,507 Austrian schillings to obtain entitlement to a full pension. The Agency refunded only 90,169 schillings to her which corresponds to her share of the contributions. She is claiming a refund of the Agency's share for the period from 26 September 1992 to 31 March 1993.
 8. The complainant was paid a one-month end-of-service allowance in December 1997, with interest calculated over a 53-month period - from August 1993 to the date of payment. She claims that the interest

should have been calculated over a 57-month period - from 31 March 1993 which was her last day for pay purposes. She also claims that the same calculation should be made for interest relating to pension and health insurance contributions.

9. At the time of her separation, before Judgment 1640 was issued, the complainant was required to pay 10,986 schillings for the health insurance which is administered by the company Van Breda. The Agency repaid her 4,929 schillings on the basis that she was not entitled to reimbursement of any amounts after 25 September 1992. She claims that she is entitled to reimbursement of the contributions paid to Van Breda from 26 September 1992 to 31 March 1993.

10. No annual leave was credited for periods of sick leave with half pay or special leave with no pay. The complainant calculates that between 1 May 1992 and 31 March 1993 she accrued 27.5 days of annual leave. The Agency granted her 4.5 days, leaving 23 days for which she claims payment with interest.

11. The Agency states that following Judgment 1640 the complainant was placed on sick leave as of 18 April 1992. It recalculated her leave in accordance with Staff Rule 7.04.1(B)(3) under which she was entitled to nine months of sick leave on full pay and up to nine months on half pay in any period of four consecutive years and also in accordance with Rule 7.03.1(B) under which special leave without pay may be granted to a staff member "for purposes normally covered by sick or annual leave when such leave has been exhausted". Her entitlement to sick leave with half pay expired on 9 August 1992. But, by applying Rule 7.04.1(B)(3) which provides for the reckoning of sick leave over rolling periods of four years, it was calculated that she had a further entitlement to sick leave with full pay from 10 August to 25 September 1992. Accordingly, the complainant was placed on special leave without pay from 26 September 1992 to 31 March 1993.

12. Rule 7.03.1(C) provides that a staff member "shall not accrue service credits" towards sick leave, annual leave, home leave, maternity leave, salary increments, termination indemnity, repatriation grant, end-of-service allowance and other service benefits during full months of special leave without pay. Therefore, a staff member must pay both the Agency's and his or her own share of the contributions to the United Nations Joint Staff Pension Fund. The amount of 107,338 schillings represents the full contribution to the Pension Fund for the period of special leave without pay (26 September 1992 to 31 March 1993) and no part of that sum is refundable. Similarly the Agency's share of the contributions towards health insurance for the same period is not refundable and the entire cost must be borne by the complainant.

13. Rule 7.04.1(D) provides:

"Staff members shall not accrue service credits towards annual leave and sick leave during sick leave on half-pay unless they request that the portion of each day which would otherwise be without pay be charged to their entitlement to accrued annual leave."

In accordance with this provision no annual leave accrued during the period when the complainant was on sick leave with half pay. Also, in accordance with Rule 7.03.1(C) referred to above, annual leave cannot accrue during a period of special leave without pay.

14. With regard to interest on the one-month end-of-service allowance, the Agency claims that the payment of a staff member's final entitlement is subject to the completion and submission of a clearance certificate. The complainant signed one on 14 July 1993 and payment was made to her on 30 July 1993. Interest on the one-month end-of-service allowance was therefore rightly calculated from the date when the final payment was made, as was any other interest due to her.

15. In her rejoinder the complainant submits that the Agency is not entitled to apply the rule relating to special leave without pay unless it also applies the rule which states that where termination is contemplated for a staff member close to retirement, he or she may be placed on special leave without pay after having exhausted sick leave entitlements provided that a disability payment is payable (Administrative Manual part II, section 7, paragraph 4).

16. The Agency refers to the fact that prior to Judgment 1640 the complainant was considered to be on special leave without pay from 21 April 1992 to 31 March 1993. Her sick leave status was reviewed in accordance with that judgment. Under paragraph 4 of annex 1 to part II, section 7, of the Administrative Manual a staff member may be entitled to disability pay while on special leave without pay but this provision applies only in cases of termination for health reasons under paragraph 3(iii) of the same annex.

Such a termination was never envisaged in the complainant's case. Her contract was never terminated. She retired on reaching the usual age.

17. The Tribunal accepts the Agency's submissions in respect of all the complainant's claims and accordingly the application for execution of Judgment 1640 is dismissed.

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