

The Administrative Tribunal,

Considering the application for interpretation and execution of Judgment 2207 filed by Mr O. T. on 14 June 2005, the reply of the Food and Agriculture Organization of the United Nations (FAO) of 28 September, the complainant's rejoinder of 30 December 2005 and the FAO's surrejoinder of 6 April 2006;

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

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 2207 delivered on 3 February 2003, the Tribunal, after setting aside the decision of 17 September 2001 by which the FAO confirmed the decision of 20 April 2000 terminating the complainant's appointment, ordered the Organization to pay him "damages equivalent to the salary, allowances and other benefits to which he would have been entitled until the end of May 2003", when he would have been able to claim pension rights.

2. The complainant, considering that the damages awarded by the Tribunal should have been calculated on the basis of the post adjustment applicable to Angola – since according to him it had been decided in the spring of 2000 to transfer him to that country – and not on the basis of the post adjustment applicable to Kenya, his duty station at the material time, and considering further that the said damages should have been calculated without deducting the termination indemnity he had already received, filed an appeal with the Organization's Appeals Committee.

In the report it transmitted to the Director-General of the FAO on 8 November 2004, the Appeals Committee, after carefully pointing out that the Tribunal's case law (see Judgments 1978 and 1887) "does not a priori exclude the possibility of filing an internal appeal in order to obtain the execution of a judgment of the Tribunal", concluded that "the basis for calculating the damages, especially where the salary and other allowances are concerned, cannot be Angola" and unanimously recommended that the claim concerning entitlement to the termination indemnity be referred to the Administrative Tribunal of the ILO.

By a letter dated 30 March 2005, which the complainant indicates as being the challenged decision, the Director-General rejected the internal appeal.

3. The complainant asks the Tribunal to order the FAO to:

- calculate the damages set by the Tribunal [in Judgment 2207] on the basis of the post adjustment for Angola,
- to pay the damages thus calculated without deducting any sum other than the amounts already paid in execution of the [above-mentioned] judgment."

Calculation of the damages awarded by the Tribunal

4. The complainant contends that, since the defendant had decided to transfer him to Angola, it should have calculated the damages awarded by the Tribunal on the basis of the post adjustment for that country. The Tribunal disagrees with this view, but endorses that of the Appeals Committee, which considered that since no formal offer had been made to the complainant regarding a post in Angola, and since no reference had been made to any such offer in Judgment 2207, the damages in question could in no way be calculated "on the basis of a post in Angola".

Deduction of the termination indemnity

5. The complainant considers that the deductions made by the defendant from the damages granted by the Tribunal are unjustified. He submits that, having determined that it would be inappropriate to reinstate him in view of his age, the Tribunal ordered the payment of damages, indicating how they should be calculated but without mentioning any deduction. The defendant should not therefore, in his view, have deducted the termination indemnity from the amount it owed.

He points out, furthermore, that even without deduction the damages awarded do not make up for his loss of earnings, since they are equivalent to the amounts to which he would have been entitled until the end of May 2003, whereas it was only two years after that, i.e. at the end of May 2005, that he would have reached the compulsory retirement age (62 years according to paragraph 301.9.5 of the FAO Manual).

6. With regard to the complainant's retirement age, the Tribunal has already given a ruling in Judgment 2207. It will not, therefore, review its decision regarding that point, namely that the month of May 2003 was "when [the complainant] would have been able to claim pension rights".

On the remaining points, the Tribunal cannot agree with the complainant's arguments. In Judgment 2207 it set aside the impugned decision and, failing reinstatement which it considered inappropriate, ordered the payment of damages equivalent to the salary, allowances and other benefits which would have been due until the end of May 2003.

The latter cannot therefore both collect the damages and retain the amounts paid for the termination set aside by the Tribunal. In the light of the above, the application for interpretation and execution of Judgment 2207 must be dismissed.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 17 May 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet