

The Administrative Tribunal,

Considering the application for interpretation of Judgment 2592 filed by the United Nations Industrial Development Organization (UNIDO) on 17 August 2007 and corrected on 28 August, the reply by Mr Y. M. (the complainant in that judgment) of 30 October 2007, UNIDO's rejoinder of 7 January 2008 and Mr M.'s surrejoinder of 30 January 2008;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

CONSIDERATIONS

1. The material facts are set out in Judgment 2592, delivered on 7 February 2007, in which the Tribunal ruled on Mr M.'s complaint. Suffice it to recall that according to paragraph 2 of the Decision in the aforementioned judgment:

“UNIDO shall pay the complainant material damages equivalent to the amounts of salary and related emoluments that he would have received for the period 1 March 2003 to 28 February 2005 had he been appointed as Regional Director of the UNIDO Office in India, together with compound interest at the rate of 8 per cent per annum calculated every month starting from 1 April 2003 until the date of payment. The complainant is to give credit for earnings, if any, in the period from 1 March 2003 to 28 February 2005.”

Mr M.'s contract with UNIDO was terminated with effect from 31 December 2002. Of particular interest is the fact that he “provided services” to a Qatari Foundation between June 2003 and July 2004. By a letter of 22 May 2007 he informed UNIDO that for the time spent providing services to the Foundation he was given a “luxurious accommodation with servants [...], chauffeured cars, first-class air tickets for [his] family to visit [him] in Qatar” and received “a gift” for providing his services to the Foundation. He also indicated that he had set up a project within the Foundation and that his own private company got involved in it. He added that having noticed “serious management problems” at the Foundation he had decided to resign and that his own private company “received no revenues” from the Foundation for the work done. In August 2004, before leaving the country, he brought an action against the Chairperson of the Foundation before a Qatari court.

Earnings in kind

2. UNIDO filed an application for interpretation of Judgment 2592 concerning two issues that arose during its execution. First, it contends that the phrasing “[t]he complainant is to give credit for earnings, if any, in the period from 1 March 2003 to 28 February 2005” should not only include monetary earnings (which neither party asserts he had received) but also a valuable item, namely a car that he received as a gift, the value of which, for insurance purposes, was 150,000 Qatari riyals at the time of shipment from Qatar to his country of residence in August 2004.

3. The Organization claims that such sum is the equivalent of 41,208.75 United States dollars according to the exchange rate applicable in August 2004. In its view, it is the sole sum to be deducted from the damages to be paid to Mr M. in application of Judgment 2592 and thus withdraws in its rejoinder its original request to “also include the other forms of non-monetary compensation and benefits in connection with [Mr M.'s] employment”.

4. It is not disputed that between June 2003 and July 2004 Mr M. provided his services to a Foundation, although not as an employee. In his reply, he states that he requested that for his services he be offered a certain car. Having provided his services, he received the car.

The word “earnings” used by the Tribunal in its judgment is apt to include the agreed receipt of a valuable item as

compensation for the provision of services, whether or not the recipient is an employee. Accordingly, Mr M. must give credit for the value of the car he received.

5. The copy of the official registration document for Mr M.'s car is attached to his reply. According to that document the original date of registration is 15 July 2003, and the date of registration of the car in Mr M.'s name is 11 September 2003.

6. Mr M. submits that on 21 August 2004, the car was valued, for insurance purposes, at 150,000 riyals, which he claims is equivalent to 33,496 dollars. He adds that if it was new it would cost about 50,000 dollars. He indicates that "if the Tribunal decides that Judgment [2592] requires [him] to give credit for the value of the vehicle as in-kind earnings, then it should be capped at 33,496 US dollars".

7. UNIDO does not contest the value of the car as established for insurance purposes in August 2004, at 150,000 riyals, nor does it claim that the value of a new car should be considered in its place. The Organization contends that such sum in riyals, considering the United Nations exchange rate of August 2004 – one United States dollar for 3.64 Qatari riyals – is equivalent to 41,208.75 dollars and not to 33,496 dollars, as alleged by the complainant.

It therefore requests the Tribunal to rule that, pursuant to the decision in Judgment 2592, the complainant is "to give credit for earnings in kind in the period from 1 March 2003 to 28 February 2005", which value it estimates at 41,208.75 dollars.

Given that the complainant insured the car at 150,000 riyals, the Tribunal finds no reason to establish any value other than that. In light of the exchange rate applicable at the time the car was insured and exported to Mr M.'s country of residence, the Tribunal finds that 150,000 riyals was equivalent to 41,208.75 dollars and that credit must be given in that amount.

Mr M.'s counterclaim

8. Mr M. introduces "as a counterclaim" a request for moral damages and legal costs as compensation for bad faith on the part of UNIDO and its attempt to delay payment. On the contrary, the complexity of the facts related to the execution of Judgment 2592 is certainly not attributable to the Organization but to the complainant's choice as to the way in which he was remunerated while providing services to the Foundation. It is also on record that it was Mr M. who postponed the execution of the judgment – until his reply in this case – providing little information about the characteristics, model and value of his car. Such lack of timely cooperation in the establishment of the facts of his own case for the execution of Judgment 2592 can hardly be blamed on the Organization.

9. Further, the Tribunal notes that UNIDO does not even express (as it might have done if its intention were to delay payment) any reservation as to the income that Mr M. might receive pursuant to his pending court case in Qatar against the Foundation. That is further proof of the good faith and generosity displayed by the Organization in executing the judgment.

10. The counterclaim made by Mr M. in his reply is therefore entirely without merit. For that reason alone it has to be rejected, without any need for further elaboration or dealing with its receivability.

Pension contributions

11. The application for interpretation also concerns the Tribunal's decision to award Mr M. "material damages equivalent to the amounts of salary and related emoluments that he would have received for the period 1 March 2003 to 28 February 2005 had he been appointed as Regional Director".

UNIDO contends that such formulation does not include, as requested by Mr M., the payment of "the pension contributions for the relevant period on the understanding that [he] would also contribute his share", on the ground that Judgment 2592 formulation – "salary and related emoluments" – is "apparently more restrictive" than that found in other judgments where an organisation was ordered to pay "salary, allowances and all benefits to which [the complainant] would have been entitled had he stayed in the organisation" (see Judgment 2090 under 9; emphasis added).

The Tribunal has already ruled on that issue in Judgment 2621 under 5, stating that "had it been its intent the

Tribunal would have specifically ordered the payment of an amount equivalent to the pension fund contributions that would otherwise have been paid by the [Organization]”; the Tribunal did not do so, either in Judgment 2621 or in Judgment 2592. In Judgment 2621 the Tribunal ruled that having “declined to order the complainant’s reinstatement [the latter] ha[d] no right that would oblige the [Organization] either to pay contributions to the [Fund] or to pay the equivalent amount to him. [...] In that context, the expression ‘full salary’ [in this case, ‘salary and related emoluments’] merely indicated, as was the case in Judgment 1338, that the complainant was to receive an amount, by way of damages, that included allowances and other entitlements that he would have received directly in the usual course of his employment, but not the benefits accruing from reinstatement or an amount equivalent to those benefits.”

12. There have been other cases where the decision to award damages did not include pension or health benefits, such as the one decided in Judgment 1904 under 7, or in Judgment 1797 under 13, since the Tribunal did not order the Organization to reinstate the complainant in employment.

UNIDO was therefore right in applying for an interpretation of Judgment 2592 concerning the meaning of “earnings”, since at the same time it also needed a specific amplification on the subsequent matter of the car and other benefits, as explained above. Those facts had not been introduced into the record by the complainant in his complaint leading to Judgment 2592 and he belatedly clarified them, in part, only in his reply to the Organization’s present application. For these reasons, no legal costs should be determined against the Organization.

DECISION

For the above reasons,

1. UNIDO should not include pension contributions to the damages to be paid to the complainant, and should deduct from such damages the sum of 41,208.75 United States dollars.
2. The counterclaim is rejected.

In witness of this judgment, adopted on 9 May 2008, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Agustín Gordillo, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Mary G. Gaudron

Agustín Gordillo

Giuseppe Barbagallo

Catherine Comtet