

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

P. (No. 16)

v.

ITU

(Application for execution)

122nd Session

Judgment No. 3637

THE ADMINISTRATIVE TRIBUNAL,

Considering the second application for execution of Judgment 2551 filed by Ms M. P. on 10 March 2014 and corrected on 8 April, the reply of the International Telecommunication Union (ITU) of 25 July, the complainant's rejoinder of 10 November 2014 and the ITU's surrejoinder of 5 February 2015;

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

Having examined the written submissions and disallowed the complainant's application for oral proceedings;

Considering that the facts of the case may be summed up as follows:

Facts relevant to this case may be found in Judgments 2551, 2684 (on the first application for execution of Judgment 2551), 2890 and 3207. Suffice it to recall that the complainant's contract was terminated on health grounds with effect from 29 May 2001 and that she was awarded a disability benefit as from the following day.

In Judgment 2551, delivered in public on 12 July 2006, the Tribunal decided to remit the case to the ITU for it to appoint a medical board for the purpose of determining whether the illness leading to the termination of the complainant's contract was service-incurred and, if

appropriate, to decide what additional compensation might be due to her.

The Medical Board, which was not finally constituted until May 2012, interviewed the complainant in the summer of 2012. Dr N., whom the complainant had appointed to represent her, and Dr G., the Board's chairman, also interviewed her individually. Dr B., the ITU's representative, stated that he considered it unnecessary to do likewise but that he was available if the complainant wished to meet with him.

In its report of 21 August 2012, which the ITU received on 28 November, the Medical Board came to the unanimous conclusion that the illness giving rise to the termination of the complainant's contract was 40 per cent service-incurred. In particular, the Board observed in the "Discussion" section of its report that "18 changes of manager [...] and [...] her downgrading without sufficient explanation [...] [were] factors placing [the complainant] under very significant stress, probably greater than average among ITU employees". By a letter of 30 November 2012, the ITU notified the complainant that the report and its conclusions were "currently under consideration" and that she would be "informed as soon as possible of any development in this case".

In a letter of 3 June 2013, the Chief of the Human Resources Management Department explained to the members of the Medical Board that in his view the report of 21 August 2012 was tainted with "obvious factual errors": contrary to what the Board had found, the complainant had been placed under the supervision of only nine different managers and, as the Tribunal had found in Judgment 1976 on the complainant's first complaint, she had never been downgraded. Furthermore, he questioned what methodology the Board had used to measure "average stress" in the ITU. He therefore asked the Board members to meet again to consider the points he had raised. On the same day, he forwarded a copy of this letter to the complainant and told her that, for the reasons explained therein, the ITU had referred the case back to the Medical Board.

On 25 November 2013 Dr B. informed the Chief of the Human Resources Management Department that as he now understood the facts better, particularly those set out in Judgment 1976, he ruled out the

existence of a causal link between the complainant's work at ITU and the illness that had led to the termination of her contract. On 11 February 2014 the Chief of the said Department notified the two other Board members that Dr B. had "revised" his conclusion and invited them to comment. They maintained their initial position.

In her new application for execution of Judgment 2551, filed on 10 March 2014, the complainant submits that, despite conclusion of the Medical Board's report of 21 August 2012, she has still not received compensation for harassment nor the "various other related entitlements" which she believes are due to her. She asks the Tribunal to award her these entitlements on the basis of her own calculations or, failing this, to "stipulate the amount of the salary, benefits, reimbursements [and] compensation" to which she considers she is entitled and to order the payment thereof with interest. She also claims costs.

In its reply the ITU argues that since there is no longer "unanimity or even a consensus" regarding the report of 21 August 2012, it is unable to award any compensation to the complainant on the basis of the conclusion reached in that report. It informs the Tribunal that on 10 June 2014 the Chief of the Human Resources Management Department told the complainant that since the Medical Board did not agree unanimously, the ITU had decided to set up a new board and he asked her to appoint a doctor as her representative. According to the ITU, the complainant informed it in an email of 13 June 2014 that she objected to this decision. It asks the Tribunal to dismiss the application for execution as devoid of merit.

In her rejoinder the complainant makes a new claim for the payment of "compensation for the injury arising from the fact that [her] medical assessment [...] had been manipulated and criticised" by two "arrogant and incompetent" senior officials of the ITU.

In its surrejoinder the ITU requests the Tribunal to dismiss all the complainant's claims.

CONSIDERATIONS

1. It should first be noted that almost ten years have passed since the delivery of Judgment 2551, by which the Tribunal remitted the case to the ITU and ordered it to set up a medical board to determine whether the illness leading to the termination of the complainant's contract was service-incurred. In Judgment 2684 (under 6 and 10), dealing with the complainant's first application for execution of Judgment 2551, the Tribunal observed that "the procedure for obtaining a further medical opinion [...]ha[d] been delayed most regrettably in a case in which the Tribunal ha[d] already drawn attention to the excessive length of the proceedings" and that "the [ITU] [had] failed in its duty to execute Judgment 2551 in good faith". The complainant even had to turn to the Tribunal again in order to obtain the convening of the Medical Board. Lastly, it was not until another application for execution was pending before the Tribunal that the medical report was submitted. The ITU refused to act on this report's conclusions, which has led to the filing of the new application for execution that is now before the Tribunal.

2. There can be no doubt that, owing to her manner and her unwillingness to cooperate on occasion, the complainant is partly to blame for the extraordinary length of these proceedings which, on the face of it, do not appear to involve a particularly complex factual or legal situation. Nevertheless, the main responsibility for the unjustified delay in dealing with this case, which originated more than 15 years ago, lies with the defendant organisation. At no time during these proceedings has the ITU displayed the attitude that might be expected of it, having regard to the duties incumbent upon it, particularly in view of the fact that the complainant has always had difficulty understanding precisely what is at stake in this dispute. A review of the relevant facts is instructive in this regard.

The defendant waited for more than six months after it had received the Medical Board's report before acting on it. It did so by informing the members of the Medical Board of Judgment 1976, delivered on 12 July 2000, by which the Tribunal had dismissed a complaint seeking a definitive description of the complainant's post, whilst underscoring

(in consideration 8) the unacceptability of the ITU's delay in resolving this matter. In the same letter to the members of the Medical Board, the defendant also pointed out that several of the facts mentioned in the "Discussion" section of their report were inaccurate.

One of the Board members stated that Judgment 1976 was "new information" in light of which he could no longer endorse the conclusions of the Medical Board's report, which he had previously supported unreservedly.

Conversely, the other members stated that they stood by their conclusions, since they considered that the new information was not decisive.

Irrespective of the fact that this information, and particularly that contained in Judgment 1976, could and should have been provided to the Medical Board at the outset, in the circumstances of this case it must be found that one member's change of mind does not in any way warrant treating the Medical Board's report – the findings of which cannot be reviewed by the Tribunal (see Judgment 3111, under 5, and the case law cited therein) – as invalid and establishing a new medical board, as the ITU argues without reference to any specific provision justifying this approach.

3. It is hence clear that the ITU has again failed to comply with the principle of good faith and has still not executed Judgment 2551. The application for execution must therefore be allowed.

4. The case will be remitted to the ITU for the complainant to be paid the sums due to her in connection with her health condition on the basis of the Medical Board's report of 21 August 2012.

5. The ITU's erroneous legal assessment has resulted in an unacceptable delay in the execution of Judgment 2551 and consequently in the final settlement of the dispute. Having regard to all the circumstances of the case, the Tribunal sees fit to award moral damages to the complainant in the amount of 20,000 Swiss francs.

6. The complainant's other claims for compensation must be dismissed as they are not connected with the execution of Judgment 2551.

7. The complainant is entitled to an award of costs, set at 1,000 Swiss francs.

DECISION

For the above reasons,

1. The case is referred back to the ITU for further action as stated in consideration 4 above.
2. The ITU shall pay the complainant moral damages in the amount of 20,000 Swiss francs.
3. It shall also pay her costs in the amount of 1,000 Swiss francs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 26 April 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ