

FORTY-SECOND ORDINARY SESSION

***In re* ALMINI (No. 2)**

(Application by Mr. Almini for interpretation of Judgment No. 306)

Judgment No. 374

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Canzio Almini on 16 March 1978 for interpretation of Judgment No. 306, the reply filed on 23 May by the International Centre for Advanced Technical and Vocational Training (International Labour Organisation), the complainant's rejoinder of 5 June and the Centre's surrejoinder of 14 August 1978;

Considering Article II, paragraph 1, of the Statute of the Tribunal and the relevant provisions of the Staff Regulations;

Having examined the documents in the dossier and considering that the material facts of the case are as follows:

A. By Judgment No. 306 of 6 June 1977 the Tribunal quashed the decision not to renew the complainant's contract of appointment, which the Director of the International Centre for Advanced Technical and Vocational Training had taken on 25 June 1975 and confirmed on 5 February 1976. The Tribunal further decided: "Mr. Almini is reinstated in his former post in the Centre. Should reinstatement prove impossible or undesirable in the view of one or other of the parties, the Centre shall pay Mr. Almini a sum equivalent to one year's salary and the contributions to the pension fund for the same period, plus interest on those sums at 8 per cent a year from 10 May 1976, the day on which the complaint was lodged." In executing that judgment the defendant organisation decided not to reinstate the complainant but to pay him the prescribed compensation.

B. The complainant asks the Tribunal to give its interpretation of the second sentence of paragraph 2 of the decision and to say "(a) whether the words 'one year's salary' should be construed to exclude post adjustment and family allowances or to mean 'one year's full salary', including, over and above net salary, post adjustment and family allowances; and (b) whether the step taken to determine the 'salary' should be the last one held by the complainant or the next one above".

C. The Centre maintains that it has executed Judgment No. 306 correctly. It declined to take account of a possible annual increment for the purpose of calculating compensation on the grounds that there is no legal entitlement to annual step increments. It was right to calculate that compensation, in accordance with the Staff Regulations, on the basis of the complainant's net salary at the time when he left the Centre or \$24,268; plus the employer's contributions to the National Institute of Social Welfare (INPS), or \$8,277.72; and interest at 8 per cent from 10 May 1976 to 21 October 1977, the date on which the compensation was paid, or \$3,780.65; i.e. a total of \$36,326.37.

CONSIDERATIONS:

By Judgment No. 306 of 6 June 1977 the Tribunal ordered the Centre to reinstate Mr. Almini in his former post and, failing that, to pay him a sum equivalent to one year's salary. It is clear from the wording of that judgment that the "one year's salary" to be paid in lieu of reinstatement is equivalent in the present instance to the salary which the complainant was receiving at the date when his appointment ended, i.e. the net salary which he was paid after deduction of tax at the source but including incidental allowances, and in particular post adjustment. There is no reason however, to take account of any increment which he might have received had he remained on the staff.

DECISION:

For the above reasons,

The application is allowed as indicated in the considerations above.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 June 1979.

(Signed)

M. Letourneur
André Grisel
Devlin

Bernard Spy

Updated by PFR. Approved by CC. Last update: 7 July 2000.