

S. (No. 10)

v.

IAEA

126th Session

Judgment No. 4025

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Ms H. S. against the International Atomic Energy Agency (IAEA) on 2 April 2014 and corrected on 3 July, the IAEA's reply of 15 October 2014, the complainant's rejoinder of 2 January 2015 and the IAEA's surrejoinder of 13 April 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings;

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

The complainant challenges the decision rejecting her request for payment of interest on the lump sum paid to her in respect of her separation entitlements.

The complainant, a former staff member, separated from the IAEA for health reasons on 31 July 2013. By a letter of 6 August she informed the Director General that she had not received a notice of her actual separation entitlements and requested the prompt payment of those entitlements. On 30 August she was informed that the Administration was in the process of calculating her final separation entitlements and that she would be provided with the details as soon as they were available.

The IAEA paid the complainant's separation entitlements on 26 September. By a letter of 21 November 2013 she requested the payment of interest on those entitlements on the basis that they had not been remitted to her on the date of her separation from service. On 24 December 2013 the Administration notified the complainant that the Staff Regulations and Staff Rules did not provide for the payment of interest on entitlement to salary, allowances and benefits and it was not the IAEA's practice to make such payments.

By a letter of 4 March 2014 the complainant requested the Director General to confirm that, as a former staff member, she was entitled to challenge the decision of 24 December 2013 directly before the Tribunal and she offered to settle the matter for a specified sum. On 27 March 2014 the Director General confirmed that the complainant was entitled to appeal the matter directly to the Tribunal and informed her that he had forwarded her settlement offer to the Office of Legal Affairs.

In her complaint the complainant impugns the decision of 24 December 2013 and asks the Tribunal to set it aside. She seeks interest on her separation entitlements in the amount of 758.95 euros, "with interest from due date". She also claims moral damages and costs.

The IAEA asks the Tribunal to dismiss the complaint in its entirety. It submits that the complaint is vexatious and constitutes an abuse of process. It requests the Tribunal to order the complainant to pay the cost of the proceedings, including all filing fees.

CONSIDERATIONS

1. The complainant claims that she is entitled "to interest for [the] late payment" of her separation entitlements. In summary, the complainant submits that the IAEA should have paid her separation entitlements on 31 July 2013, the date of her separation from service. In her view, as a matter of good faith, interest began to accrue on the amount due on 1 August 2013 but certainly no later than 6 August 2013, the date on which she made a demand for payment. She also maintains that "as a general principle interest should be paid on past due sums or, as in this case, payments made without any just reason for delay".

The complainant contends that the IAEA would benefit from unjust enrichment if it were not required to pay interest on the lump sum amount of the separation entitlements.

2. At the outset, it is observed that the IAEA Staff Regulations and Staff Rules do not specify that separation entitlements are to be paid on the date of separation from service or provide any other date or time frame within which the separation entitlements must be paid. As well, the Staff Regulations and Staff Rules do not provide for the payment of interest on the amount due for separation entitlements. It follows that there is no statutory basis for the submissions that the IAEA should have paid the separation entitlements on the date of the complainant's separation or that interest began to accrue on that date.

3. The complainant's assertion that interest began to accrue on the amount due for the separation entitlements is rejected. In Judgment 3650, under 8, the Tribunal stated:

“One specific argument advanced by the complainant was based on Judgment 2282 in which the Tribunal ordered that the IAEA pay the disputed terminal allowances plus interest from the date on which each claim for terminal allowance had been filed by the complainant. In this matter, the complainant noted that under the Staff Regulations and Staff Rules there was no entitlement to interest in relation to the payment of terminal allowances. However the Tribunal notes that that case involved the awarding of pre-judgment interest from the date the cause of action accrued. This is a power not infrequently exercised by courts. However Judgment 2282 does not support a proposition that a right to payment of an amount under the Staff Regulations and Staff Rules carries with it a right to payment of interest from the time the amount was claimed to the time it was paid.”

Moreover, the complainant's reliance on statements made in Judgments 2782, under 6(a), and 874, under 3, to support her assertion is misplaced. The facts in those two cases are materially different from those in the present case and, as such, the statements relied upon have no application to the facts in this case.

4. As stated above, the complainant submits that “as a general principle interest should be paid on past due sums or, as in this case, payments made without any just reason for delay”. She points out that

as the IAEA was able to provide her with an estimate of the amount of the separation entitlements in March 2013, the IAEA had ample time to calculate the final amount of the separation entitlements by the date of her separation and those entitlements should have been paid on that date or at the latest on 6 August 2013. This statement is purely conjecture on the part of the complainant. It ignores the possibility of intervening matters that may affect the final calculation, the complexity of the calculation and, importantly, the fact that the calculation cannot be made until the clearance process is completed. Although the Administration provided the complainant with the relevant clearance certificate on 4 March 2013 and asked for its return before 31 July 2013, the complainant returned the certificate on 7 August 2013. Further, given that the entitlement to the payment of separation entitlements does not arise until the date of the separation from service, the fact that the Administration gave the complainant an estimate of the amount of separation entitlements is irrelevant in terms of the question of unreasonable delay. Furthermore, in this case there was no delay in the payment of the separation entitlements.

5. As the complainant has failed to establish any entitlement to interest on the amount paid for the separation entitlements, a consideration of the question of unjust enrichment is unnecessary. As an aside, it is also noted that United Nations Dispute Tribunal (UNDT) Judgment UNDT/2012/186, on which the complainant relied on in support of her position on unjust enrichment, was overturned in relevant part on appeal before the present complaint was filed in April 2014.

6. The IAEA submits that the complaint is vexatious and constitutes an abuse of process. It requests that the Tribunal order the complainant to pay the costs of the proceedings including all filing fees. The IAEA points out that the present case was based on grounds that are patently untenable. The IAEA adds: "It follows that, particularly if read in the context of the long series of grievances filed by the [c]omplainant (six out of 12 were filed in the last 12 months), the case under examination does not stem from a good faith pursuit of justice by the [c]omplainant, but rather supports a perception that [it] has no other

purpose than to draw attention away from more meritorious case review.”

7. Citing Judgment 2211, the complainant acknowledges that the Tribunal’s case law does allow counterclaims for costs but only in circumstances where the claim is entirely frivolous and amounts to abuse of process. She submits that in this case the IAEA’s request amounts to retaliation against her for exercising the only right to redress available to her.

8. In its surrejoinder, the IAEA argues that the present complaint fits squarely within the Tribunal’s observation in Judgment 2211 and it also cites Judgments 3414, under 5, and 1884, under 8, in support of its position.

9. At this juncture, it is observed that bad faith cannot be automatically inferred solely on the basis of the filing of a large number of complaints by a litigant. This is well illustrated by a review of the twelve complaints referenced by the IAEA, one of which is the present complaint. The complainant was successful in six complaints and was awarded damages and costs; four complaints were dismissed; and one was withdrawn.

10. In Judgment 3568, under 5, the Tribunal framed relevant considerations in the awarding of costs against a complainant in the following terms:

“The Tribunal may indeed award costs against the authors of frivolous, vexatious and repeated complaints which absorb its resources and those of the defendant organisations and hamper the Tribunal’s ability to deal expeditiously with other complaints. Any such award must, however, remain exceptional, since it is essential that international civil servants’ access to an independent and impartial judicial body is not impeded by the prospect of an adverse award of costs if their complaint were to prove unfounded (see Judgments 1962, under 4, and 3196, under 7).”

11. A review of the complainant's pleadings alone reflects a case that obviously had no possibility of success and is clearly frivolous. The complainant did not advance any positions that were arguable and relied on cases that are plainly distinguishable on the facts and a judgment that was overturned in relevant part on appeal.

12. Accordingly, the complaint will be dismissed and the counterclaim for costs will be allowed. As this is the first occasion in the series of complaints against the IAEA in which the Tribunal will make an award of costs against this complainant, the amount will be nominal. The complainant will be ordered to pay the IAEA 100 euros in costs within sixty days of the date of the public delivery of this judgment.

13. The IAEA requested that the Tribunal join the present complaint with the complainant's ninth complaint. As the latter complaint was the subject of Judgment 3832, delivered in public on 28 June 2017, this request is moot.

DECISION

For the above reasons,

1. The complaint is dismissed.
2. The complainant shall pay the IAEA costs in the amount of 100 euros within sixty days of the date of the public delivery of this judgment.

In witness of this judgment, adopted on 1 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ