Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L.

v.

WTO

127th Session **Judgment No. 4057**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms V. A. L. against the World Trade Organization (WTO) on 13 July 2016 and corrected on 26 July, the WTO's reply of 5 September, the complainant's rejoinder of 14 December 2016 and the WTO's surrejoinder of 20 February 2017;

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, for which neither party has applied;

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

The complainant challenges the decision to reduce her pension on the basis of a reduction of the consumer price index.

The complainant, who is a retiree of the WTO, resides in Switzerland. Her WTO pension is paid to her in Swiss francs. Pursuant to Article 32(b) of the WTO Pension Plan Regulations, benefits paid in Swiss francs are adjusted on 1 January of each year according to the annual movement of the Swiss consumer price index. The evolution of that index between December 2014 and December 2015 led to a 1.3 per cent downward adjustment of benefits as of 1 January 2016. Pension Plan beneficiaries, including the complainant, were informed of this in January 2016.

On 5 February 2016 the Secretary of the Pension Plan sent the complainant a document showing the amount of her pension for January

2016. On 8 March 2016 the complainant wrote to the Secretary of the Pension Plan requesting that the Management Board of the Pension Plan review the decision of 5 February 2016. She contended, in substance, that the adjustment was unlawful insofar as it reduced the amount of her pension for 2016 to a level that was lower than that of her initial pension.

By a letter of 19 May 2016 the Secretary of the Pension Plan informed the complainant that the Management Board had concluded, at its meeting of 22 April 2016, that the downward adjustment was the result of an accurate application of the annual cost-of-living adjustment provided for in Article 32 of the Pension Plan Regulations. The Management Board therefore confirmed the decision to adjust her pension. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to draw all legal consequences, that is to say order the WTO to pay her a monthly pension in an amount not lower than that which she was initially paid (9,413 Swiss francs). She also claims costs.

The WTO asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant is a former member of staff of the WTO. She resides in Switzerland and is the recipient of a pension paid under the WTO Pension Plan. In early 2016, she was informed that the benefits she and other retired members of the WTO's staff residing in Switzerland were to be paid under the Plan were to be adjusted. The benefits were to be reduced by 1.3 per cent, effective 1 January 2016. The stated reason for the reduction was that it reflected a negative change (of 1.3 per cent) in the Swiss consumer price index for the period December 2014 to December 2015.

2. The complainant challenges in her brief the legality of the reduction on two broad grounds. The first is that it involved a breach of the "equal treatment" principle. The second is that the provision in the Pension Plan Regulations identified as the mechanism which effected reduction, Article 32(b), should be construed *contra proferentem* and in

favour of the staff and, in effect, should not be treated as a mechanism which could have the result of reducing pensions.

3. It is convenient to deal with the second ground at the outset. Article 32(b) of the Pension Plan Regulations provides:

> "In the case of benefits paid in Swiss francs, the benefit shall be adjusted on 1 January of each year according to the annual movement of the Swiss consumer price index."

The rule or principle of interpretation is that a clause in a document should be interpreted in favour of the party who did not draft the clause (in this case the staff), and not in favour of the party who did draft the clause, sought the inclusion of the clause or possibly in whose interests the clause was intended to operate (that is to say *contra proferentem*). However this rule, whatever its width, only operates in circumstances where the clause is ambiguous (see, for example, Judgment 1755, consideration 12, and, more recently, Judgment 3355, consideration 16). A consumer price index is typically a measure of movements from time to time in the prices of a basket of goods or services, usually relative to a base point established some time earlier. While often, historically, those movements have been upwards (that is, increasing relative to the base point), the very nature of the index will mean there will be downward movements at times of deflation when the price of the basket of goods and services tends towards the base point. The language of Article 32(b), and in particular the word "adjusted", makes clear that the retirement benefits will be adjusted upwards or downwards (and potentially remain constant) depending on the movement in the Swiss consumer price index. The Article is clear and unambiguous and no occasion arises for it to be construed *contra proferentem*, and the complainant's argument to this effect is rejected.

4. In her rejoinder, the complainant refines her arguments and, on one view, casts them more narrowly than expressed in her brief. However, irrespective of whether they are cast more narrowly, they can be treated as the complainant's final position in prosecuting her complaint. Firstly she accepts that the amount of her pension may go up and down. However she argues that "the adjustment of the said pension implies,

like the adjustment of salaries, a safety net", and that "the amount of pension for a given month should never go below that of her initial pension". As a matter of fact, the complainant retired from the WTO on 31 December 2014 and the monthly pension then payable to her was 9,413 Swiss francs. She was advised of this in a letter dated 16 February 2015 from the Secretary of the Pension Plan. The reduction of 1.3 per cent effective January 2016, resulted in her monthly pension reducing to 9,291 Swiss francs. Thus the argument, in concrete terms, is that while the complainant's pension may be adjusted upwardly or downwardly, it cannot be adjusted downwardly below 9,413 Swiss francs. The complainant also accepts that pay and pensions are not identical though the adjustment methodologies should be alike.

5. The Tribunal has, in its case law, spoken of pensions being "deferred pay" and stated that because "pensions are subject to the same basic rules as pay, a method establishing the terms of adjusting the pensions paid to the retirees of an organisation is to be considered as being governed by the same requirements" (see Judgment 2793, consideration 20). This was a reference to the need that any methodology adopted to determine staff members' salary adjustments must result in stable, foreseeable and clearly understood results. Article 32(b) satisfies this requirement. The principles governing the adjustments to salary also include the Noblemaire principle which, additionally, applies to pension benefits (see Judgment 986, consideration 7). But nothing in the material suggests this principle has been violated.

6. The Tribunal's case law does not establish a principle that there can never be a downward adjustment of pensions (that there can be such downward adjustments is apparently accepted by the complainant in her rejoinder) and indeed there is a theme in the case law that it is entirely appropriate to have, in the rules governing pension funds, a provision to preserve the purchasing power of the pension, to protect staff members from "the adverse repercussions of a rise in the cost of living on their purchasing power and hence in theory to maintain the standard of living their pension initially secured for them" (see Judgment 2615, consideration 6). As a matter of logic and fairness, this

approach would justify a reduction in pensions in the face of falling costs of living. The Tribunal rejects the argument of the complainant that it is unlawful to adjust her pension downwardly to reflect reductions in the cost of living with the result it is less than the pension initially paid to her.

7. The complainant appears to argue that she (like other recipients of the pension presumably) is being treated unequally because of a practice to freeze salaries of serving staff rather than reduce them even if the methodology for salary calculation and adjustment might otherwise suggest a downward adjustment. However these two classes of individuals are not in the same position in fact or in law (see, for example, Judgment 4029, consideration 20). The former are not members of staff, the latter are. Moreover a salary, at base, is to reward specified work. A pension, at base, is to provide an income stream to a pensioner to maintain a particular standard of living during retirement. This argument is unfounded and is rejected. While these types of payments may be interrelated, they are sufficiently different for the purposes of the application of the "equal treatment" principle.

8. In the result, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 2 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

YVES KREINS

DRAŽEN PETROVIĆ