

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**H.**

**v.**

**ITU**

(Application for interpretation filed by ITU)

**136th Session**

**Judgment No. 4656**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 4515 filed by the International Telecommunication Union (ITU) on 21 September 2022, Mr K. H.'s reply of 10 November 2022, ITU's rejoinder of 29 December 2022 and Mr H.'s surrejoinder of 3 February 2023;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

#### CONSIDERATIONS

1. ITU has filed an application for the interpretation of order 2 of the decision issued by the Tribunal on Mr H.'s first complaint, contained in Judgment 4515, delivered in public on 6 July 2022.

2. By way of background, on 14 October 2019, Mr H. was informed of the Secretary-General's decision to suspend him from duty with full pay effective from the same date, until further notice. This was on the basis that allegations of misconduct had been made against him and that a formal investigation would be undertaken. At the material time, Mr H. held a grade D.1 appointment at step 8. When he became eligible for an advancement to step 9 at the same grade, with effect from

1 December 2020, a decision was taken to withhold that within-grade step advancement pending the outcome of the investigation, which formally started in late October 2019. On 19 October 2020, the investigator sent a pre-final version of the investigation report to him for comments. Simultaneously, the Secretary-General requested the investigator to provide him with an interim report on the status of the investigation, which she did on 3 November 2020, using the same format as the pre-final version of the report, but deleting her conclusions so as to provide only the descriptive and analytical part of the investigation. On 13 November 2020, having reviewed the interim report, the Secretary-General decided to suspend Mr H. from duty without pay until further notice. On 30 November 2020, Mr H.'s fixed-term appointment expired. Thereafter, as the investigation was ongoing, his appointment was renewed on a monthly basis. By a letter dated 15 July 2021, which Mr H. impugned in his first complaint, he was informed that, in keeping with one of the Appeal Board's recommendations, the Secretary-General had agreed to reinstate his suspension with pay from 13 November 2020 until 18 February 2021, with no interest being awarded on the resulting payment of his salary. With effect on 3 March 2022, he was dismissed for misconduct.

3. The Tribunal issued the following orders on Mr H.'s first complaint in Judgment 4515:

- “1. The impugned decision is set aside to the extent stated in considerations 9 and 10 of this judgment. The decisions of 13 November 2020 and 16 November 2020 are also set aside.
2. **ITU shall pay the complainant material damages as stated in consideration 9 of this judgment.**
3. ITU shall pay the complainant interest as stated in consideration 10 of this judgment.
4. ITU shall pay the complainant moral damages in the amount of 15,000 Swiss francs.
5. ITU shall pay the complainant costs in the amount of 8,000 Swiss francs.
6. All other claims are dismissed.” (Emphasis added.)

Having, in consideration 9 of that judgment, justified the award of material damages to Mr H. for ITU's unlawful decision to convert his suspension with pay to suspension without pay from 19 February 2021 pending the outcome of the disciplinary proceedings, the Tribunal stated, among other things, that "ITU will be ordered to pay [Mr H.] his unpaid full salary and other benefits for the period of his suspension from 19 February 2021 until the effective date of his dismissal, deducting therefrom the contributions to the United Nations Joint Staff Pension Fund and the ITU staff health insurance scheme paid by the organisation on behalf of [Mr H.] during the period in question".

4. The parties agreed with ITU's final calculation of the amount of the material damages payable to Mr H. in respect of order 2 of the subject decision, except for two further payments which the latter claimed. They were set out in the following two points by his counsel in an email to ITU, dated 9 September 2022:

- "1. The ITU did not take into consideration that [Mr] H. became eligible for grade 9 from 1 December 2020 which should have increased his base salary for the purposes of your calculations. [...]
2. The ITU only counted 7.5 days of accrued Annual Leave days instead of 30 days, omitting the remaining 22.5 days which he is owed."

ITU's application for the interpretation of order 2 of the subject decision is limited to asking the Tribunal to determine whether these matters are within the award of material damages to which Mr H. is entitled under that order. It justifies the receivability of its application based on the Tribunal's case law that such an application is receivable only if the meaning of order 2 gives rise to uncertainty or ambiguity about its meaning or purport to such an extent that its execution is impossible (see Judgment 1306, consideration 2) and is necessary in light of the Tribunal's guidance, in Judgment 2988, consideration 4, that an organization's duty to calculate staff salaries and benefits in accordance with its regulations and rules applies equally to the calculation of the amount due for salary and benefits pursuant to a judgment of the Tribunal.

5. Regarding Mr H.'s assertion set out in point 1 of consideration 4 of this judgment, ITU justifies calculating the material damages the Tribunal awarded to him by using the base rate of step 8 within the grade D.1 pursuant to which he was remunerated at the material times. Under Staff Regulation 3.4 and Staff Rule 3.4.1, the award of a step 9 increment within the D.1 grade to Mr H. was conditional upon being evaluated by his supervisors based upon "satisfactory service" and "satisfactory performance and conduct". ITU deferred the decision to grant him the within-grade step increment when it was due with effect from 1 December 2020 seemingly awaiting the outcome of the disciplinary charges against him which eventually led to the termination of his service with result that the decision to grant him the step increase was not made by 19 February 2021. His salary therefore did not reflect it. He should have challenged the ITU's failure to grant him the step increase. He cannot, in effect, seek to contest it in an application for interpretation.

6. Regarding the issue set out in point 2 of consideration 4 of this judgment on whether Mr H. was entitled to an additional 22.5 days annual leave, ITU, citing Staff Regulation 9.16 and Staff Rule 5.1.1, proffers two arguments to support its decision not to compensate him therefor. It argues, firstly, that annual leave is primarily meant to be used by staff members as days off, which are not to be converted into a sum of money because the purpose of such leave is to afford them time for rest and private matters. It argues, secondly, that receiving payment for accrued annual leave is the exception and the ITU Council – the authority responsible for adopting the Staff Regulations – has deemed it fit to limit the number of days of annual leave which a staff member may carry forward from one year to the next to half of the days due to her or him in any calendar year, and the total accumulated annual leave cannot exceed 60 days. On these bases, ITU states that, since Mr H. was suspended without pay from 19 February 2021, it initially did not credit him with annual leave for the period during which he was suspended. But when in Judgment 4515 the Tribunal set aside that decision, it recalculated his accrued annual leave for the period 19 February 2021 to 3 March 2022. This, ITU states, resulted in it paying Mr H. for

7.5 additional days of annual leave for that part of the material damages the Tribunal awarded him in Judgment 4515, which reached the maximum 60 days of payable annual leave under Staff Regulation 9.16.

7. Mr H. disputes the applicability of Staff Regulation 9.16 and Staff Rule 5.1.1. However, these rules govern the accrual of annual leave and the payment of accrued leave on termination. The organization is correct in what it contends about the operation of those rules. In addition, there is nothing in Staff Regulation 9.16 and Staff Rule 5.1.1 that provides for a waiver of the maximum accrued annual leave on account of the illness of a staff member. ITU had therefore correctly interpreted its own rules and the Tribunal's judgment when it compensated him for sixty days of accrued annual leave at the time of his separation.

In summary, the Tribunal determines that there is no merit in Mr H.'s claims set out in either point 1 or point 2 of consideration 4 of this judgment.

#### DECISION

For the above reasons,

Order 2 of decision in Judgment 4515 is to be interpreted in accordance with considerations 5 and 7 above.

In witness of this judgment, adopted on 23 May 2023, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ