

FIFTY-FOURTH ORDINARY SESSION

In re ACOSTA ANDRES (No. 3)

Judgment No. 644

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Southern Observatory (ESO) by Miss Maria Isabel Acosta Andres on 29 March 1984 and corrected on 8 May, the ESO's reply received on 28 June, the complainant's rejoinder of 25 July and the ESO's surrejoinder of 23 August 1984;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles LS III.1.04 and LS IV.1.02 of the ESO's Regulations for Local Staff Members;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. In Judgment No. 508 the Tribunal ordered the ESO, among other things, to pay the complainant a sum equal to three times the total gross remuneration paid to her for the period from 1 March 1980 to 28 February 1981 "as improved by any retroactive adjustment granted by the organisation", plus interest at 12 per cent per annum from the date of the complaint. In June 1982 the ESO issued a statement of the sums received by the complainant in the material period. By Judgment 570 the Tribunal rejected an application by the ESO for review of Judgment 508. On 25 January 1984 the ESO's Administrator in Chile made payment to the complainant in execution of the above-mentioned decision. On 1 February the complainant's counsel replied observing that the ESO had miscalculated the sums paid by failing to apply the retroactive adjustments in salary due to the rise in the cost of living as measured by the Chilean consumer price index (IPC). The Head of Administration wrote on 15 February to explain that no IPC adjustments had been retroactively applied to salary paid for the material period. The discussion which ensued proved of no avail and the complainant filed her complaint.

B. The complainant submits that the ESO has failed to apply the IPC increases to the amounts she has received, though the Tribunal clearly intended it should. Nor has it taken account of the decline in the value of the peso, from 34 to the United States dollar at the date of Judgment 508 (3 June 1982) to 84 at that of Judgment 570 (20 December 1983). The ESO's application for review, declared devoid of merit, delayed execution and has caused the complainant financial loss, which she estimates at 8,077 United States dollars. She asks that the ESO apply the retroactive IPC adjustments up to the date of Judgment 570 and pay her compensation as set out above for the delay in execution of Judgment 508, or else apply the retroactive IPC adjustments from the date of her original complaint up to the date of Judgment 508. She also seeks costs.

C. The ESO replies that the claims are unfounded. There was no negotiated general retroactive rise in salaries, the only kind that it need take into account. There is nothing in Judgment 508 to require compensation for inflation. Nor is there any sound reason for awarding compensation on the grounds of the decline of the peso as against any foreign currency.

D. In her rejoinder the complainant enlarges on her pleas and presses her claims, alleging that the ESO has failed to execute Judgment 508 correctly.

E. In its surrejoinder the ESO submits that there is nothing in the rejoinder to refute the arguments it put forward in its reply. It again submits that there are no grounds for any adjustment for inflation.

CONSIDERATIONS:

1. On 3 June 1982 the Tribunal delivered Judgment No. 508 deciding the matters then in issue between the complainant and the organisation.

Paragraph 2 of this decision is as follows:

"The Tribunal, finding reinstatement to be impossible or inadvisable, orders that the organisation pay to the complainant as compensation for wrongful dismissal a sum equal to three times the total gross remuneration paid to her in respect of the period 1 March 1980 to 28 February 1981 and as improved by any retroactive adjustment granted by the organisation."

Paragraph 11 of the considerations in Judgment 507 explains the above reference to retroactive adjustment and is as follows:

"The complainants say that as a result of collective bargaining a salary study is made annually and followed by a general improvement in the salary levels. They do not, however, allege that there is any contractual obligation on the organisation to increase salaries in this way. The organisation agrees that, if any improvement is made, it must be paid to all, including the complainants, in the same position. The compensation payable to the complainants for their wrongful dismissal should be assessed accordingly."

2. The organisation has admittedly complied with the said decision save in one respect. It has not paid any sum in respect of retroactive adjustment and the complainant seeks to be paid compensation accordingly. For the reasons given in paragraph 4 of the considerations in Judgment No. 643 this claim fails.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner