

Registry's translation, the French text alone being authoritative.

FIFTY-SEVENTH ORDINARY SESSION

In re VERRON (No. 4)

Judgment No. 706

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed against the United Nations Educational, Scientific and Cultural Organization (UNESCO) by Mr. Michel Verron on 15 February 1985, UNESCO's reply of 30 April, the complainant's rejoinder of 26 June and UNESCO's surrejoinder of 26 July 1985;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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

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

A. In Judgment 607, which it delivered on 12 April 1984, the Tribunal did not determine the duration of the sick leave to which it declared the complainant to be entitled. On 3 May he wrote to the Director-General to say he was ready and willing to consider how effect was to be given to the judgment. On 8 August the Director-General answered that after careful study by his staff he had decided to comply with the judgment and had instructed the Bureau of Personnel to get in touch with the complainant to settle the period of the sick leave. By a letter of 21 August the Director of the Bureau of Personnel informed the complainant that, in the opinion of Professor Hurth, of the Neurosurgery Department of the Henri Mondor Hospital, he ought to have been given sick leave up to 30 September 1981 and that his appointment was therefore retroactively extended from 1 April 1981 to that date.

On 11 September 1984 the complainant wrote to the Director to point out that in fact he had been on sick leave until June 1982 and to propose his appointment be retroactively extended to 14 June; he appended to his letter documents which showed that he had been reinstated in the French civil service from 1 April 1981. The Director wrote back on 17 October to express surprise at his having returned to his national civil service and ask him for a detailed explanation. In his answer of 13 November the complainant protested against the aspersion on his good faith: he had no intention of accumulating the entitlements of a French civil servant and those of an international one as was clear from letters he had written to the French civil service. He appended a certificate from a medical commission of the Department of the Upper Marne declaring that for reasons of health he could not resume work before 30 June 1982.

The complainant has filed with the Tribunal an application for execution of Judgment 607 "so as to prevent undue delay in settlement".

B. The complainant observes that according to Judgment 607 it was for the parties to reach agreement on the period of sick leave. Several months elapsed and still they had not done so. On 1 April 1981 he returned to the French civil service and was put on sick leave. Although his leave did not actually expire until 30 June 1982, he proposed to UNESCO that the retroactive extension of his UNESCO appointment should expire on 14 June because by that date he had been certified fit, on certain conditions, to resume work. UNESCO's proposal to extend the appointment from 1 April to 30 September 1981 was based on Professor Hurth's opinion of 14 September 1981 that he would be fit to resume work on 1 October: as is clear from the medical files, his sick leave had to be extended long after that date.

He invites the Tribunal to declare that UNESCO ought to have extended his appointment up to 30 June 1982, or failing that to 14 June 1982, and grant him his full entitlements, including pension rights. He makes a subsidiary claim to damages equivalent to the difference between the sums which the French civil service actually paid him and those UNESCO ought to have paid him, plus an amount corresponding to loss of pension rights. He claims interest on the sums due and costs in full.

C. The Organization replies that its discovery that he had gone back to the French civil service was purely incidental. It submits it did its utmost to execute the judgment, but that some interpretation of it was required and the length of the sick leave ought to have been determinable by criteria set by the Tribunal. It believes that neither the criteria set in French law nor the period determined by the medical commission of the Upper Marne, nor any period subsequent to 30 September 1981, should be taken into account. Its proposal to grant six months' leave complied with the judgment. It invites the Tribunal to reject the complainant's claims and declare that he is not entitled to interest.

D. In his rejoinder the complainant develops his pleas, observing that account must be taken of the opinions expressed by doctors at the material time and that he has undertaken to pay back to the French civil service sums he received in respect of sick leave.

E. In its surrejoinder UNESCO reaffirms the need to interpret Judgment 607, maintains that the duration of the sick leave should be that which was established on the basis of Professor Hurth's report, and repeats its conclusions.

CONSIDERATIONS:

1. In Judgment 607 the Tribunal decided that the complainant, a former UNESCO official, was entitled to sick leave as from 1 April 1981. He was referred to the Director General for review of his entitlements after medical inquiry. The parties have failed to agree and the complainant has again come before the Tribunal.

2. The Tribunal's judgments have the authority of *res judicata*. An international organisation which has recognised the Tribunal's jurisdiction is therefore bound not merely to refrain from acting in disregard of a judgment, but first and foremost to take whatever action the judgment may require. The judgment must be both respected and executed.

3. The Tribunal delivered Judgment 607 on 12 April 1984. After getting in touch with Administration officials the complainant wrote on 3 May to the Director-General demanding the earliest possible execution. In his reply of 8 August the Director-General declared he would comply with the judgment and was instructing the Bureau of Personnel to get in touch with the complainant to settle the period of sick leave. But on 21 August, without consulting the complainant, the Director of the Bureau of Personnel decided to grant him a six-month extension of appointment, as from 1 April to 30 September 1981. The complainant objects and claims sick leave up to 30 June or at least to 14 June 1982.

4. Although Judgment 607 took effect immediately, some time was needed to consider its implications and determine the period of sick leave due. The Tribunal holds that in the circumstances the delay was admissible: in taking its decision by 21 August 1984 UNESCO acted with reasonable promptness.

5. But what the Tribunal said in paragraph 17 of its judgment was disregarded. Implicit in its reference to the memorandum of 9 May 1980 was an assumption that UNESCO would at least get in touch with the complainant before determining the length of his sick leave, and indeed that was the intention of the Director-General's letter of 8 August 1984. Yet there was no exchange of views between the two sides. All that the Director of Personnel said in his letter of 21 August was: "I am instructed to inform you that the chief medical adviser of the Organization has agreed that, according to Professor Hurth, Neurosurgery Department, Henri Mondor Hospital, your sick leave ought to have continued until 30 September 1981." That that is the only communication from UNESCO to suggest a physician was consulted makes it no easier for the Tribunal to make a ruling.

In defence of its attitude the Organization adopts a different stance.

It relies first on its own application for review of Judgment 607. By a judgment of today's date the Tribunal rejects that application, and the plea fails.

Secondly, UNESCO submits that execution calls for interpretation. The complainant believes that the Tribunal intended to make him whole; UNESCO that the grant of sick leave required no more than payment of a sum of money in lieu.

The Organization's case is that if the complainant's view prevailed not only would there be breach of the principle of *res judicata*, but he would be allowed to occupy at one and the same time two mutually incompatible positions. After the impugned decision was taken to terminate his appointment the complainant applied for and obtained

reinstatement in the French civil service, and the French administration put him on sick leave from 1 July 1981 to 30 June 1982. In support of the impugned decision, which it abides by, UNESCO contends that it consists in nothing but the payment of monetary compensation. Yet it also maintains that because one cannot have both the status of an international civil servant and that of a national civil servant it is inconsistent to allow the complainant concurrent periods of leave both as one and as the other.

6. This is a controversy the Tribunal need not resolve. Being quite clear, its judgment calls for no interpretation. The Tribunal declared the complainant entitled to sick leave and referred him to the Organization for determination of the period of the leave, if possible by agreement: the amount due to him is that which was payable during the period in question to a staff member employed at the same grade at UNESCO headquarters.

The parties are mistaken in believing that execution depends on theoretical niceties.

In particular the Tribunal will not uphold UNESCO's objection that the complainant is getting double pay. The complainant has professed willingness to refund his salary to the French Government once he is in receipt of the amounts due from UNESCO, and items of evidence he produces indeed show he has such intent. The Tribunal finds no difficulty over this.

7. The material issue is the length of the sick leave he should have been granted.

As was said above, UNESCO has, without explanation, set the period at six months.

The complainant takes the view that the most satisfactory solution would be to make the period of UNESCO leave the same as the period he was granted under French law, and he produces certificates from his own physician, reports by a medical commission of the Department he was assigned to, that of the Upper Marne, and the certificate written by Professor Hurth mentioned above.

UNESCO replies that the period should not depend on criteria set in municipal law.

Although it is true, and the complainant accepts, that French law does not apply, the evidence he has produced may serve in arriving at a solution, especially since UNESCO has declined to enter into any discussion of the matter.

8. The following conclusions may be drawn from that evidence.

The complainant underwent a neurosurgical operation on 1 July 1981. Having examined him on 14 or 15 September Professor Hurth reported: "Mr. Verron ... would like to go back to work on 1 October 1981, and from the examination I have just carried out I believe that quite possible... But it is imperative that over the next twelve and especially the next six months he avoid any strain on the spinal column (no carrying of weights, no twisting of the back and no long rough journeys)."

That report supports the impugned decision since it reveals that the complainant himself wanted to go back to work. But there are serious reservations expressed, and in fact the complainant did not go back. He was kept on sick leave for six months from 1 October on the recommendation of the medical commission of the Department of the Upper Marne. Having exhausted his sick leave entitlement under French law by 1 April 1982 he was, again on the recommendation of the commission, suspended until 1 July 1982.

The certificates from the complainant's own physician were written in February 1983. They diagnose lumbago and other back disorders and prescribe rehabilitation treatment. Though

not written at the material time, these certificates do show that a year and a half after his operation the complainant's condition was not yet satisfactory.

9. The complainant's pleas and the evidence referred to above may not be decisive, but the Organization does not challenge them.

It would of course be possible to order an expert inquiry and indeed the complainant makes a subsidiary application for one. But the Tribunal believes that the findings of further inquiry in 1985 would be very unlikely to shed light on the state of the complainant's health in 1981.

The Tribunal concludes that, contrary to its own wishes and to the Director-General's instructions, the Organization made a decision without consulting the complainant and refused to discuss questions of fact. To settle the matter once and for all the Tribunal will increase the period of leave from six to nine months, i.e. from 1 April to 31 December 1981. This will involve no other change in the complainant's entitlements, UNESCO's sole obligation being to determine the amount of compensation due to him in the light of 6 above.

10. The complainant is also entitled to interest at 10 per cent a year on the sums due under this judgment from 3 May 1984, the date on which he asked UNESCO to execute Judgment 607 and from which there was a demand to pay.

11. The complainant is awarded 10,000 French francs as costs.

DECISION:

For the above reasons,

1. The complainant is entitled to nine months' sick leave from 1 April to 31 December 1981.
2. He is referred to the Director-General of UNESCO for determination of the pay due, the amount to bear interest at 10 per cent a year from 3 May 1984.
3. The Organization shall pay him 10,000 French francs as costs.
4. His other claims are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner