Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D. (No. 3)

v.

OTIF

(Application for interpretation)

132nd Session **Judgment No. 4409**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 4215 filed by Mr F. D. on 29 June 2020 and the reply of the Intergovernmental Organisation for International Carriage by Rail (OTIF) of 4 February 2021;

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

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 4215, delivered in public on 10 February 2020, the Tribunal, ruling on the complainant's third complaint, set aside, on account of procedural flaws, the decisions of the Administrative Committee and the Chairman of OTIF to end, as of 1 May 2013, the complainant's appointment as the Organisation's Head of Administration and Finance, which he held pursuant to a letter of appointment of 27 March 2012.

The Tribunal found that it was not appropriate to reinstate the complainant at OTIF, but it ordered the Organisation to compensate him for the material injury resulting from the termination of his employment with the Organisation, which occurred during his probation period, and to redress all other injuries of any kind which the unlawful decisions had caused him.

2. As the complainant considers that the payment by OTIF of the sums referred to in the decision in Judgment 4215, which was effected on 24 February 2020, did not suffice to fully execute the judgment, he has filed this application for interpretation of Judgment 4215 under Article VI, paragraph 1, of the Statute of the Tribunal.

3. It should be noted that OTIF, by a decision adopted by its Administrative Committee at its session on 27 and 28 June 2017 and notified by its Secretary General to the Director-General of the International Labour Office (ILO) by a letter of 17 January 2018, has withdrawn its recognition of the Tribunal's jurisdiction.

In accordance with the Tribunal's case law, as set out in Judgments 1043, consideration 3, and 4141, considerations 2 to 4, that withdrawal took effect on the date of the deliberation of the Governing Body of the ILO taking note of the decision in question, which in the present case took place on 13 March 2018.

Although the Tribunal had jurisdiction to rule on the complaint that gave rise to Judgment 4215, which had been filed before that date and which OTIF had expressly excluded from the scope of its withdrawal decision, since that date, the Tribunal has no longer been competent to hear new complaints against that Organisation.

4. However, it must be considered that, where, as in this case, the Tribunal has delivered a judgment on a complaint against an international organisation which has since withdrawn from the Tribunal's jurisdiction, it nevertheless remains competent to hear any applications for interpretation of that judgment. The Tribunal is, by definition, the only body capable of interpreting its judgments, should that be necessary. For similar reasons, the Tribunal also remains competent to hear applications for execution or review that may be brought in respect of a judgment delivered in the same circumstances.

5. Notwithstanding the date on which it was filed, this application does therefore fall within the Tribunal's jurisdiction, and it is noted that the Organisation does not raise any objections on this point in its reply.

6. Under the Tribunal's case law, ordinarily an application for interpretation can concern only the decision contained in a judgment and not the grounds therefor. It is, however, accepted that such an application may additionally concern the grounds if the decision refers to them explicitly so that they are indirectly incorporated in the decision (see Judgments 2483, consideration 3, 3271, consideration 4, 3564, consideration 1, 3822, consideration 5, or 3984, consideration 10).

Furthermore, an application for interpretation will be receivable only if the meaning of the judgment concerned is uncertain or ambiguous to such an extent that its execution is impossible (see, for example, Judgments 1306, consideration 2, 3014, consideration 3, and also aforementioned Judgments 3271, consideration 4, 3822, consideration 5, and 3984, consideration 10).

7. In this case, the decision in Judgment 4215 reads as follows:

"1. The decision of OTIF's Administrative Committee of 28 June 2017, the decision of the Chairman of the Administrative Committee of 25 April 2013, and the decision of the Administrative Committee of 26 and 27 June 2013 are set aside.

2. OTIF shall pay the complainant 50,000 Swiss francs in damages under all heads.

3. The Organisation shall pay the complainant 13,549.35 Swiss francs, with interest calculated as specified in consideration 28 [of the judgment], by way of indemnities linked with his separation from service.

4. It shall also pay him 7,000 Swiss francs in costs.

5. All other claims are dismissed."

8. The meaning of this decision, which in points 2, 3 and 4 lists exhaustively the various awards made against OTIF and determines the amount of each with the utmost precision, is clearly not uncertain or ambiguous to such an extent that the execution of the judgment concerned is impossible. It is plain that the only sums which the judgment orders the Organisation to pay are those thus referred to.

This is all the more apparent given that point 2 of the decision specified that the compensation of 50,000 Swiss francs awarded to the complaint by way of damages was set "under all heads", point 3 stated that the sum of 13,549.35 Swiss francs, with interest, was awarded to him "by way of indemnities linked with his separation from service", thereby covering all indemnities due in that respect, and the remainder of the complainant's claims were explicitly dismissed in point 5.

9. The only ground of the Judgment to which the decision expressly referred and which, being thus indirectly incorporated in the decision, could give rise to a request for interpretation, is consideration 28, relating in particular to the calculation of the interest due on the aforementioned sum of 13,549.35 Swiss francs. However, the relevant statement in that consideration that that sum "[should] bear interest at the rate of 5 per cent per annum as from 1 July 2013 until the date of its payment" is completely clear. The Tribunal merely points out in this regard that, according to its case law, and contrary to what counsel for the complainant initially maintained in discussions with counsel for OTIF, the interest to which its awards are sometimes subject must be understood as simple interest and not – unless there is an express indication to that effect in the decision in the judgment concerned – as compound interest (see Judgments 802, consideration 4, 3013, consideration 3, and 4235, consideration 15).

10. The complainant's submissions relating to other grounds of the judgment in question, such as those set out in considerations 21 and 22, to which the decision does not expressly refer, are irreceivable, under the case law cited above, in an application for interpretation.

11. Moreover, those submissions are entirely unfounded.

Although it is true, as the complainant submits, that the Tribunal stated in consideration 21 of the judgment that he was entitled to seek redress for all the injuries that OTIF had caused him, it then set out in detail, in considerations 22 to 24, the various factors taken into account when assessing each of these injuries before concluding, in consideration 25, that "[h]aving regard to all [those] preceding circumstances, [it] consider[ed] that the various injuries suffered by the complainant as a result of the flaws affecting the decisions challenged in this case [would] be fairly redressed by awarding him compensation in the amount of 50,000 Swiss francs under all heads". Plainly, it therefore makes little sense to rely on any of these considerations in isolation in an attempt to justify a claim to an additional sum.

Furthermore, the complainant is wrong to argue that, since the impugned decisions were set aside, the amount of his repatriation grant and the amount of compensation for his loss of remuneration should have been calculated taking into account the remaining 30 months for which he would have been employed if his appointment had been

confirmed at the end of his probation period. As stated in consideration 22 of the judgment, the Tribunal did not consider that the complainant's appointment should unquestionably have been confirmed, but only that he had been denied a "valuable opportunity" in that respect, which does not support his argument or warrant claims to that amount.

12. In fact, it appears that, by this application, the complainant is not so much seeking, as he submits, a clarification of the meaning of the judgment in question – which is entirely unnecessary – as to obtain an increase in the amount of the awards made in his favour. Plainly, an application for interpretation cannot seek to lead the Tribunal to amend its original judgment.

13. In its reply, OTIF submits that the complainant's application is an abuse of process and raises the possibility that he might be ordered to pay costs on that account. However, the Tribunal does not consider it appropriate, in the circumstances of the case, to make such an award, as it is noted that the Organisation, which confines itself to "defer[ring] to the law" on this point, has not formally submitted a counterclaim to that effect.

DECISION

For the above reasons,

The application for interpretation is dismissed.

In witness of this judgment, adopted on 24 May 2021, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN DOLORES M. HANSEN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ