

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

K.

v.

ITU

(Application for interpretation filed by ITU)

141st Session

Judgment No. 5117

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 4832 filed by the International Telecommunication Union (ITU) on 25 September 2024, Ms E.-J. K.'s reply of 1 November 2024, ITU's rejoinder of 28 November 2024 and the complainant's surrejoinder of 18 December 2024;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 6, paragraph 5, of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. In the complaint that led to Judgment 4832, delivered on 8 July 2024, the complainant had challenged the decision to impose on her the disciplinary sanction of demotion by two grades, namely from grade D.1 to grade P.4.

In Judgment 4832, the Tribunal considered in particular that ITU had manifestly failed to provide evidence establishing beyond reasonable doubt that the complainant had committed serious misconduct or gross negligence, and that the organization had breached the principle of proportionality by imposing on her this sanction. It found that these

were errors of law that, together with other irregularities, vitiated the impugned decision of 3 September 2021, as well as the prior decision of 7 December 2020 by which the Secretary-General had decided to impose on the complainant this demotion with immediate effect.

2. In Judgment 4832, the Tribunal therefore decided to set aside the impugned decision and the 7 December 2020 decision, to remit the matter to the Disciplinary Chamber of the Joint Advisory Committee for reconsideration of the disciplinary sanction and re-evaluation of the case, to reinstate the complainant at the D.1 level, and to pay her material damages, moral damages and costs.

3. As regards more particularly material damages, the Tribunal decided as follows in order 3 of its decision:

“ITU shall reinstate the complainant in her former position at the D.1 level, or, if that is no longer possible, in another post at the D.1 level, and award her material damages in accordance with what is stated at consideration 53 of [the] judgment.”

Consideration 53 relevantly stated:

“The organization shall in the meantime reinstate immediately the complainant in her former position at the D.1 level (and shielding the present incumbent), or, if that is no longer possible, in another post at the D.1 level, **with full retroactive effect, including payment of all salary, benefits, step increments, pension contributions, entitlements and all other emoluments that she would have received, from the effective date of her demotion through the date of her reinstatement, as compensation for the material damage caused to her by the two decisions.** The sums payable to the complainant for each monthly remuneration shall bear interest at the rate of 5 per cent per annum from the date when they fell due until the date when they are paid.” (Emphasis added.)

4. On 3 September 2024, the complainant provided the organization with particulars of value-added tax (VAT) amounts allegedly incurred by her during the period of her demotion because of the improper loss of her diplomatic immunity status, together with supporting documentation, seeking payment pursuant to the implementation of Judgment 4832.

5. In the present application for interpretation, ITU seeks the Tribunal's clarification on the issue of whether the material damages payable in accordance with consideration 53 of Judgment 4832 include "compensation for any [...] VAT assessment paid in Switzerland by the complainant from the date of her demotion to the P.4 level (7 December 2020) until the date of her reinstatement at the D.1 level".

6. ITU contends that the compensation sought by the complainant lies outside the scope of material damages defined in consideration 53, and is accordingly not payable under the terms of Judgment 4832 for three main reasons:

- "a. The tax exemption forms part of the privileges and immunities bestowed upon ITU by the Swiss government under the headquarters agreement. As such, it operates for ITU's benefit and is not a personal right, benefit or entitlement of the complainant;
- b. Any amounts sought fall due and are payable under the national tax regime of Switzerland. The Tribunal has held that it is not competent to consider claims made by officials against third parties or to make orders binding third parties. In addition, for non-income taxation questions, the Tribunal has held that an organization cannot be held liable for direct or indirect taxes owed or paid by an official;
- c. Any damage that the complainant has allegedly sustained under the loss of the tax exemption provided for in the headquarters agreement is too remotely connected to her demotion for ITU to be held liable."

7. ITU adds that if the Tribunal were to conclude that the terms of Judgment 4832 did include an entitlement for the complainant to receive material damages relating to VAT amounts incurred due to her inability to claim tax immunities during the period of her demotion, it considers that the claims contained in the request dated 3 September 2024 have not been substantiated by evidence, and are variously misconceived, insufficiently verified, or inadequately quantified, such that they cannot be accepted.

8. In Judgment 4907, consideration 4, the Tribunal recalled the principles governing an application for interpretation:

“[...] an application for interpretation is receivable only if the meaning of the judgment concerned is uncertain or ambiguous to such an extent that the judgment cannot be executed (see, for example, Judgments 4409, consideration 6, 3984, consideration 10, 3822, consideration 5, and 3014, consideration 3). Moreover, under Article 6, paragraph 5, of the Tribunal’s Rules, such an application can ordinarily concern only the decision contained in a judgment, and not the grounds thereof. Indeed, it can concern the grounds of the judgment as well only if the decision refers to them explicitly so that they are indirectly incorporated in the decision (see aforementioned Judgments 4409, consideration 6, 3984, consideration 10, 3822, consideration 5, and also Judgments 3564, consideration 1, 3271, consideration 4, and 2483, consideration 3). The Tribunal notes that these requirements are set out at the beginning of the form used to file an application for interpretation.”

9. In Judgment 4913, consideration 5, the Tribunal further emphasized that, ordinarily, it is the words, and only the words, of the orders in the decision that are the subject of interpretation if they are uncertain or ambiguous. Of course, as relevantly recalled in Judgment 4409, considerations 4 and 12, it is beyond contention that the Tribunal is, by definition, the only body capable of interpreting its own judgments, should that be necessary, and that a clarification of the meaning of a judgment cannot lead to an amendment of the latter or an increase in the amount of the awards made.

10. The Tribunal finds unhelpful the reasons put forward by ITU in support of the interpretation it is seeking, which are listed in consideration 6 above.

First, for the reasons below, it is unnecessary in the present case to decide whether a VAT exemption can be characterized as a benefit or entitlement of an official resulting from his or her diplomatic immunity status.

Second, in this case, the complainant is not asking the Tribunal to consider a claim against third parties or to issue orders binding third parties. The complainant’s claims for the recovery of the VAT exemption that she has lost are directed exclusively against ITU.

Third, the Tribunal disagrees that the loss of the tax exemption provided because of the diplomatic immunity status attached to a grade D.1 position is too remotely connected to the complainant's demotion. As the Tribunal observed in consideration 48 of Judgment 4832, the loss of diplomatic status was a direct consequence of the demotion by two grades, and the organization was aware of it and did consider this consequence as part of its own legal analysis of the situation. It is indeed because of her unlawful demotion as of 7 December 2020 that the complainant was no longer able to benefit from the VAT exemption, and for no other reason.

11. The Tribunal observes, however, that neither order 3 of the decision nor consideration 53 of Judgment 4832 deal specifically with the situation of the VAT exemption established for the benefit of an official with diplomatic immunity status. The Tribunal also notes that nowhere in the judgment is there any allusion or reference to the loss of VAT exemption.

12. The words used by the Tribunal in consideration 53 of Judgment 4832 merely point to an order to reinstate the complainant in her former position at the D.1 level or, if that is no longer possible, in another post at the D.1 level "with full retroactive effect". The enumeration that follows is limited to words that relate to the payment of salary, benefits, step increments, pension contributions, entitlements and emoluments related to the status of the complainant as an official of the organization and which she would have received from the latter, and not from any other source. These words do not suggest that the benefit of a VAT exemption at the moment of a given purchase granted by the Swiss authorities to an official with diplomatic immunity status can be qualified as a "payment received" by the official. The words used at consideration 53 rather suggest that its clear intent was that the complainant should receive, as material damages, amounts to be calculated by reference to the salary and related allowances that she would have been entitled to from ITU but for the demotion imposed on her, and nothing else. The following sentence of consideration 53

indeed supports that interpretation as it refers to the expression “each monthly remuneration”.

13. The complainant argues that the principle at the basis of the wording of consideration 53 is the principle of the restoration of the *status quo ante*, that is, that she be placed in the same position that she would be in, had the unlawful decision not been taken. In Judgment 4092, consideration 7, the Tribunal stated the following:

“As the Tribunal has stated on many occasions in its case law, when a reinstatement order is applied retroactively to the date when the official’s employment was unlawfully terminated, this implies that the official is considered as having remained in service after that date under the same conditions as before and is therefore entitled to the salary and other financial benefits that he would have received if this had actually been the case (see, for example, Judgments 1384, consideration 18(a), 1447, consideration 17, 2261, consideration 16, 2468, consideration 19, and 3723, consideration 8). The reinstatement ‘with all legal consequences that this entails’ referred to in [order] 2 of the decision in Judgment 3871 can therefore only be construed as having such effects.”

By analogy, the complainant considers that a similar reasoning should apply in the present case, where she was unlawfully demoted to grade P.4, with effect from 7 December 2020, and where she should be restored in her previous rights as a holder of a D.1 post in which she would have been exempted from making VAT payments.

14. The Tribunal cannot follow the complainant in this line of reasoning. In the context of the words used by the Tribunal in consideration 53 of Judgment 4832, the obligation to restore the *status quo ante* is limited to the payment of benefits and entitlements that the official receives from ITU and it does not include privileges and immunities bestowed by national authorities under headquarters or host agreements for the benefit of the organization and the independence of its officials.

15. The Tribunal does not dispute the fact that the value of the loss of a VAT exemption could, in some situations, form part of an official’s claim for material damages resulting from an unlawful demotion, but this

is not what was contemplated in the present case in consideration 53 of Judgment 4832.

The Tribunal cannot agree with the complainant's contention that the VAT amounts that she paid in Switzerland from 7 December 2020, when she lost her diplomatic immunity status because of her unlawful demotion, until her legitimation cards type C were reissued by the Swiss authorities on 20 August 2024, were included in the payment of the benefits, entitlements, and other emoluments that she would have received as contemplated in consideration 53 of Judgment 4832. Neither the words used in this consideration, nor the global context of the considerations found in Judgment 4832, support this interpretation.

16. It is convenient to recall that, in the complaint and rejoinder filed by the complainant in the case leading to Judgment 4832, no reference was made to the VAT exemption nor was this potential loss discussed in any way as part of the potential material damages she allegedly incurred. In truth, the sole reference of the complainant to the loss of her diplomatic immunity status as a result of her unlawful demotion found in her pleadings was part of the explanations developed in support of the moral damages that she claimed.

17. The fact that the complainant could not receive the refund of the VAT amounts paid by her during the period at issue as a direct result of her unlawful demotion does not entail that consideration 53 of Judgment 4832 should be interpreted as entitling her to the payment of these amounts. As already stated in consideration 8 above, for an application for interpretation to be receivable, the words of the orders made by the Tribunal must be uncertain or ambiguous, and they clearly are not. The fact that consideration 53 states that the demotion is annulled "with full retroactive effect" is of no assistance to the complainant's argument. This language, placed in the proper context of the words of the enumeration that follows, does not suggest, without more, that this would include benefits from sources other than the organization.

18. The Tribunal finds that ITU is correct in stating that, in the circumstances of this case, the compensation of the loss of the VAT exemption to which the complainant could have been otherwise entitled was outside the scope of the material damages defined in consideration 53 of Judgment 4832. If the complainant considered that she had an entitlement to such, she should have clearly articulated her claim in this regard in her initial complaint. She did not. Consideration 53 cannot be interpreted as having granted material damages that were neither sought in the pleadings nor included as part of the relief claimed.

19. Given that the meaning of both order 3 and consideration 53 of Judgment 4832 is neither uncertain nor ambiguous, but clear as stated in the above considerations, this entails that the application for interpretation is not receivable and must be dismissed.

20. In the circumstances of this case, and having regard in particular to the fact that the application for interpretation was submitted by ITU in response to a claim made by the complainant, she will not be awarded the moral and exemplary damages she seeks, nor costs.

DECISION

For the above reasons,

The application for interpretation of Judgment 4832 filed by ITU is dismissed, as are the complainant's claims for damages and costs.

In witness of this judgment, adopted on 6 November 2025, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

RENÉ M. VARGAS M.