

SEVENTY-SIXTH SESSION

***In re* DER HOVSEPIAN (No. 2)**

(Application for interpretation)

Judgment 1306

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 1235 filed by Mr. Tony Der Hovsépian on 1 April 1993, the reply of 6 May from the Universal Postal Union (UPU), the complainant's rejoinder of 8 June and the Union's surrejoinder of 9 July 1993;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Regulation 4.3 of the Staff Regulations and Chapter XI of the Staff Rules of the International Bureau of the UPU;

Having examined the written submissions;

CONSIDERATIONS:

1. The complainant joined the staff of the International Bureau of the Universal Postal Union in 1965. By Judgment 1235 of 10 February 1993 the Tribunal quashed a decision by the Director-General of the Union upholding an earlier refusal to appoint him as head of Section C, which is in charge of services and transport. The Tribunal ordered the Union to pay him 25,000 Swiss francs "in moral damages" and 10,000 in costs. The Union paid him those sums in execution of the judgment but took the view that it had no further obligation thereunder and in particular was not required to order his retroactive appointment as head of Section C or promotion to grade P.5. He objects to its stand and applies to the Tribunal for interpretation of Judgment 1235.
2. As was held in Judgment 802 (in re van der Peet No. 10), an application for interpretation of a judgment is receivable only if the meaning of the Tribunal's ruling is uncertain or ambiguous. In this case the Union submits that under the pretext of an application for interpretation the complainant wants the Tribunal to judge his case again and that in any event he has failed to follow the internal appeal procedure in Chapter XI of the Union's Staff Rules. It argues that on both scores the application is irreceivable.
3. The Union is mistaken. This is an application for interpretation, as the wording of the claims shows. It is receivable because the parties disagree on how to combine points 1 and 2 of the ruling in Judgment 1235, only the Tribunal itself may resolve the issue, and there was no need to follow any internal appeal procedure beforehand.
4. The complainant's case is that the quashing of the Director-General's decision of 28 November 1991 meant appointing him head of Section C or granting him personal promotion to grade P.5. The Union's answer is that the award of moral damages precluded the granting of his claim to appointment to the post he wanted.
5. Neither party is reading the judgment correctly. The complainant is wrong because the quashing puts the Union under no duty to grant him the appointment or promotion he wants, and the Union is wrong because the award of moral damages may not, in the absence of a declaration to that effect by the Tribunal, be deemed to preclude any sort of action by way of consequence of the quashing in point 1.
6. When a decision is quashed it is deemed never to have been taken. The Administration must do whatever the correction of the position in law may require and by due process take a new decision that is free from the fatal flaws in the quashed one and that gives effect to the Tribunal's ruling in the light of the reasoning that underlies it.
7. The quashed decision of 28 November 1991 upheld the earlier one not to appoint the complainant head of Section C. It was quashed because the Director-General had misconstrued Regulation 4.3 of the Staff Regulations by believing that he was bound to appoint an outside candidate to the post; because he had drawn clearly mistaken

conclusions from the evidence; and because he had taken irrelevant issues into account. The quashing means that the complainant is entitled to have the Union review his right to appointment or to promotion in compliance with the material rules. The award of moral damages affords him redress for the injury the Union's unlawful act caused him up to the date of Judgment 1235; it does not relieve the Union of remedying that unlawful act by reviewing the matter of his rights, and this time doing so properly.

8. In the circumstances the Union must meet his costs, and the amount is set at 2,000 Swiss francs.DECISION:

For the above reasons,

1. Judgment 1235 of 10 February 1993 shall be construed as stated in 7 above.
2. The Union shall pay the complainant 2,000 Swiss francs in costs.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

(Signed)

José Maria Ruda
E. Razafindralambo
Michel Gentot
A.B. Gardner