

NINETY-SEVENTH SESSION

(Application for execution)

Judgment No. 2327

The Administrative Tribunal,

Considering the application for execution of Judgment 2232 filed by Mr J. M. B. on 20 October 2003 and corrected on 10 November, the reply of the Organisation for the Prohibition of Chemical Weapons (OPCW) of 12 December 2003, the complainant's rejoinder of 11 February 2004 and the Organisation's surrejoinder of 23 April 2004;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Facts relevant to this case are contained in Judgment 2232 delivered on 16 July 2003. In that judgment, the Tribunal set aside the impugned decision and ordered the OPCW to pay the complainant material damages equivalent to the amount he would have received in salaries and emoluments (excluding representation allowance) between the date of his dismissal and 12 May 2005, subject to the deduction of any sums paid to him in connection with the cessation of his functions. The Tribunal also ordered the Organisation to pay the complainant 50,000 euros in moral damages and 5,000 euros in costs.

On 6 August 2003 the complainant's counsel wrote to the Director General of the OPCW giving details of the bank account into which the sums concerned were to be paid. Having received no reply, he sent a reminder on 25 August. The acting Head of the Human Resources Branch acknowledged receipt of the first letter on 28 August. He pointed out that the decision giving rise to Judgment 2232 had been taken by the Conference of the States Parties and added that the complainant would be informed of the Conference's decisions regarding the matter in due course. On 3 September the acting Legal Adviser replied to the second letter sent by the complainant's counsel, informing the latter that the Organisation's Secretariat was awaiting instructions from the Conference, which was to hold its Eighth Session from 20 to 24 October. The complainant filed the present application on 20 October 2003.

In a fax dated 27 October, the OPCW's agent sent the complainant's counsel an extract from a document in which it stated that, at its Eighth Session, the Conference had "noted" Judgment 2232 and had instructed the OPCW's lawyers to approach the complainant's counsel "to arrange an amicable settlement". He asked counsel to "confirm" a meeting for the following day. The complainant replied through his counsel, however, that there was "nothing to discuss". On 8 December 2003 the Organisation filed an application for review of Judgment 2232 (see Judgment 2328 also delivered this day).

B. The complainant recalls that, according to the Tribunal's case law, the Tribunal's judgments carry the authority of *res judicata* and must be executed immediately. In his view, there was no reason to delay payment of the sums due and at the very least the defendant may be accused of having failed to act with due diligence.

He asks the Tribunal to order the execution of Judgment 2232, that is, the payment of the sums which the OPCW was ordered to pay him in compensation for material and moral damages, and to order the Organisation to pay compound interest on all sums due at 10 per cent per annum and costs.

C. In its reply the defendant also refers to the Tribunal's case law. It says that, since it has filed an application for review of Judgment 2232 – on the grounds that subsequent to the delivery of that judgment it had received information to the effect that the complainant had very rapidly found gainful employment – the dispute has not been settled and that it is therefore "not yet legally bound to execute Judgment 2232". It recognises that its application for review does not concern the payment of moral damages and costs, but maintains that "out of regard

for the Tribunal and its judgments, the latter must be executed in their entirety and not in part or in pieces”.

D. In his rejoinder the complainant argues that the document attached by the OPCW to its reply, which it describes as a “decision” by the Conference, is in fact no more than an extract from the report of the Eighth Session, referring not to a decision by the Conference but to a statement by its Chairman concerning Judgment 2232; this statement was read out to the delegates but was not published as an official document. The complainant accuses the Organisation of having tried to mislead the Tribunal. Furthermore, with regard to the defendant’s request to “confirm” a meeting, he points out that since, as a matter of principle, he had rejected any suggestion of an “amicable settlement”, considering that to be incompatible with the authority of *res judicata*, his counsel had never agreed to the requested meeting.

On the merits, the complainant contends that no decision or instruction by the Conference of the States Parties was required for the execution of the judgment, especially since, at its Seventh Session, the Conference had authorised its Chairman and the Director General to take whatever administrative measures were necessary concerning the case. He rejects the OPCW’s argument whereby it is not bound to execute the judgment because it has filed an application for review thereon. Besides the fact that the application is, in his view, totally unfounded, it would not have a suspensory effect and the obligation to execute the judgment in full remains as before. He maintains that the Organisation’s attitude towards him amounts to harassment and that the only purpose in filing an application for review was to gain time, which further aggravates the material and moral injury he has suffered. He therefore extends his claims, evaluating the moral and material damages at 30,000 and 15,000 euros respectively.

E. In its surrejoinder the defendant maintains that the complainant underestimates the powers of the Conference of the States Parties and points out that, at least as far as the Organisation was concerned, Judgment 2232 was no “ordinary” judgment, insofar as it set aside a decision taken by the Conference. It submits that it acted in good faith and in full transparency, and reiterates that the Conference took proper “decisions” regarding the follow-up required for the Tribunal’s ruling. It considers it logical that the application for review should have a suspensory effect, since such application would make no sense if the judgment had already been executed.

CONSIDERATIONS

1. This is an application for the execution of Judgment 2232, delivered on 16 July 2003. The essential parts of that judgment for present purposes read as follows:

“17. Consequently, the impugned decision must be set aside and the complainant’s further pleas need not be examined by the Tribunal. The complainant, who does not seek reinstatement, is entitled to compensation in respect of the injury caused by his unlawful dismissal. The Tribunal considers that his material injury may be properly assessed by determining the amount he would have received in salaries and emoluments (excluding representation allowance) between the date of his dismissal and 12 May 2005, subject to the deduction of any sums paid to him in connection with the cessation of his functions. As regards compensation for the moral injury undoubtedly suffered by the complainant, the Tribunal shall award him 50,000 euros in moral damages, which he shall be free to dispose of as he sees fit.

18. Since he succeeds, the complainant is entitled to an award of costs, which the Tribunal sets at 5,000 euros.

DECISION

For the above reasons,

1. [...]
2. The OPCW shall pay the complainant material damages calculated as per consideration 17 of the present judgment.
3. The Organisation shall also pay him 50,000 euros in moral damages.
4. It shall pay him 5,000 euros in costs.”

2. On 6 August and again on 25 August 2003 the complainant's counsel wrote to the defendant Organisation requesting payment of the sums awarded by the Tribunal in the judgment in question. By letters dated 28 August and 3 September 2003, the Organisation replied that it was awaiting a decision from the Conference of the States Parties which was scheduled to be held from 20 to 24 October 2003.

3. The application for execution was filed with the Tribunal on 20 October 2003.

4. A meeting between the counsels for the two parties, apparently arranged for 28 October for the purpose of negotiating a settlement of the judgment debt was cancelled by the complainant's counsel on the grounds that there was nothing to discuss.

5. On 8 December 2003 the Organisation filed an application for review of Judgment 2232. The principal ground alleged is as follows:

"7. The reason behind this particular decision is that subsequent to the delivery of Judgement No. 2232 on 16 July 2003, the Organisation has received new and substantiated information to the effect that the Complainant entered into alternative gainful employment not later than March 2003, and may in fact have entered into such employment not long after the cessation of his service with the OPCW on 22 April 2002. Consequently, the main purpose of the discussion on a possible amicable settlement with respect to the damages awarded by the Tribunal was, on the one hand, to enable the Organisation to find out from the Complainant the details of his gainful employment since his departure from the Technical Secretariat of the OPCW, including the quantum of earnings from such employment and, on the other hand, to explore the possibilities of an arrangement which the two parties could amicably accept with respect to the impact of the occupational earnings on the material damages awarded by the Tribunal which may ultimately be paid to the Complainant with his consent as a full and final settlement, without prejudice to the payment to him of the full amount of moral damages and costs decided by the Tribunal."

6. The Tribunal regrets the attitudes displayed by both parties. Whether or not the allegation in the Organisation's application for review is true, the complainant should not have refused to have his counsel meet with the Organisation's lawyer. He was in breach of his obligation to continue to deal with his former employer in good faith.

7. For its part, the Organisation's refusal to execute even those parts of Judgment 2232 for which no review is sought, notably the condemnation to moral damages and to costs, puts it, too, in serious breach of its obligations. Internal debates and discussions in the Conference of the States Parties are irrelevant to its obligation faithfully and promptly to execute the Tribunal's judgments. In Judgment 2328 also delivered this day, the Tribunal deals with the merits of the application for review but there can be no excuse for the Organisation doing as it has and taking the law into its own hands. It must execute Judgment 2232 and must pay interest on all sums due at 8 per cent, compounded semi annually and calculated from the due date to the date of payment. There will be no further order as to costs.

DECISION

For the above reasons,

1. The Organisation must execute Judgment 2232 and must pay interest on all sums due at 8 per cent, compounded semi annually and calculated from the due date to the date of payment.

2. Each party shall bear its own costs.

In witness of this judgment, adopted on 14 May 2004, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 14 July 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 19 July 2004.