

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**B.**

**v.**

**UPU**

(Application for interpretation and review filed by the UPU)

(Application for execution filed by Ms B.)

**127th Session**

**Judgment No. 4076**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation and review of Judgment 3927 filed by the Universal Postal Union (UPU) on 23 February 2018, Ms C. B.'s reply of 13 July, the UPU's rejoinder of 31 August and Ms B.'s surrejoinder of 5 October 2018;

Considering the application for execution of Judgment 3927 filed by Ms B. on 19 April 2018 and corrected on 15 May, the UPU's reply of 21 June, Ms B.'s rejoinder of 24 September and the UPU's surrejoinder of 26 October 2018;

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

Having examined the written submissions;

#### CONSIDERATIONS

1. In Judgment 3927, delivered in public on 24 January 2018, the Tribunal did not set aside the impugned decision to suspend Ms B. (hereinafter "the complainant") without pay for a period of three months for misconduct, on the ground that it was not a disproportionate sanction in the circumstances of the case. However, the Tribunal

awarded the complainant 10,000 Swiss francs in moral damages for the UPU's failure to provide her with copies of the investigation report and the Disciplinary Committee's report during the disciplinary proceedings and at the time of the adoption of the impugned decision. As the complainant succeeded in part, the Tribunal also awarded her 4,000 Swiss francs in costs.

2. The main reason for the decision is found at consideration 11 of Judgment 3927: while the UPU had provided the complainant with summaries of the witness interviews and given her an opportunity to comment on them, the only way to properly ensure that a staff member has been fully informed of all the evidence and other elements of the case against her or him, on which the authority has based or intends to base its decision, is to supply her or him with the pertinent documents. Consequently, the UPU could not invoke the confidentiality of such documents based on Staff Rule 110.4 of the Staff Rules of the International Bureau of the UPU to deny the complainant access to a copy of either the investigation report or the findings and recommendations of the Disciplinary Committee. The Tribunal interpreted Staff Rule 110.4(3) as meaning that the deliberations are confidential and that the consequent reports are not to be published or shared unless or until the documents are relied on in adversarial proceedings, including in steps leading to the imposition of a disciplinary measure.

3. In its application for both interpretation and review of Judgment 3927, filed on 23 February 2018, the UPU submits that the Tribunal's finding that the complainant was deprived of information necessary to her defence during the internal investigative and disciplinary processes constitutes a material error. It argues that the internal rules of the organization do not authorise the sharing of investigative and disciplinary reports with the staff member in question. It contends that the complainant had the information necessary to her defence during both the internal investigative and disciplinary processes. It further argues that the Tribunal failed to take into account and draw conclusions from the disclosure of the reports in question during the proceedings before

the Tribunal, which provided the complainant with ample opportunity to review the documentation and to comment thereon.

4. The UPU requests the Tribunal to provide “a clear interpretation and/or review of and reasons for its findings” and to rescind the decision contained in Judgment 3927 insofar as it relates to the award to the complainant of moral damages and costs.

5. The complainant acknowledges that on 25 May 2018 she received full payment of the amounts awarded to her in Judgment 3927. She submits that none of the arguments put forward by the UPU constitutes a ground for review of the judgment or for interpretation of the decision as the UPU merely attempts to re-litigate the case and show its disagreement with the Tribunal’s findings. She asks the Tribunal to declare that the UPU’s application is irreceivable and devoid of merit, to order the UPU to pay her moral damages in the amount of 20,000 Swiss francs for frivolously maintaining its application for interpretation and review despite the full execution of Judgment 3927, and to award her costs.

6. On 19 April 2018 the complainant filed an application for execution of Judgment 3927, because as of that date, none of the orders made in that judgment had been executed. She had received a letter dated 26 March 2018 from the Deputy Director General informing her that the UPU had filed an application for interpretation and review of Judgment 3927 and that the Council of Administration had instructed the International Bureau to “await the outcome of the review process before the [Tribunal]” as well as a “final deliberation and decision” of the Council of Administration which would be meeting in April 2018. Although, as noted above, the amounts awarded to her in Judgment 3927 were subsequently paid to her, she maintains her application for execution because of the late payment of the amounts due, for which she says she is entitled to interest, and claims further moral damages and costs. Specifically, she claims moral damages for having to file the application for execution in an amount not less than 30,000 Swiss francs, and exemplary damages to compensate the injury to her health, honour,

dignity and reputation caused by the illegal conduct of the UPU in retaliation for the exercise of her fundamental rights of appeal. She also claims costs in the amount of 10,000 Swiss francs, and interest at the rate of 5 per cent per annum on the sums paid to her belatedly pursuant to Judgment 3927, for the period commencing 30 days after the public delivery of that judgment and ending on the date of payment (25 May 2018).

7. As the two applications concern the same judgment, the Tribunal finds it convenient to join them in order to render one judgment. The Tribunal finds the written submissions to be sufficient to reach a reasoned decision and therefore denies the complainant's request for oral hearings.

8. According to the Tribunal's case law, ordinarily an application for interpretation can only concern the decision in a judgment and not the grounds therefor (see, for example, Judgment 3984, consideration 10, and the case law cited therein). The application for interpretation is, on the face of the record, irreceivable as it does not put in issue the terms of the orders made in the decision in Judgment 3927.

9. Regarding the application for review, it is well settled that the Tribunal's judgments are final and carry the authority of *res judicata*. They may be reviewed only in exceptional circumstances and on strictly limited grounds. The only admissible grounds therefor are failure to take account of material facts, a material error (in other words, a mistaken finding of fact involving no exercise of judgement, which thus differs from misinterpretation of the facts), an omission to rule on a claim, or the discovery of new facts on which the complainant was unable to rely in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. On the other hand, pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea afford no grounds for review (see, for example, Judgments 3001, consideration 2, 3452, consideration 2, 3473, consideration 3, 3634, consideration 4, 3719, consideration 4, and 3897, consideration 3).

10. In Judgment 3927 the Tribunal found that the UPU was mistaken in interpreting Staff Rule 110.4 as prohibiting the staff member affected from getting access to the report of the Disciplinary Committee. It must be added that the Tribunal recognized that the complainant's right of defense and due process had been protected and the impugned decision was not set aside. In any case, the UPU's submission on this matter affords no ground for review as it is essentially a disagreement with the Tribunal's interpretation of Staff Rule 110.4, which is not an admissible ground for review.

11. In conclusion, in its application for interpretation and review, the UPU simply disagrees with the Tribunal's appraisal of the evidence and its interpretation of the law. The UPU's arguments, as summarized above, demonstrate that the present application does not raise any admissible ground for review, nor any question of interpretation, and that it is in fact merely an attempt to re-open issues already settled in Judgment 3927. Accordingly, it must be dismissed. However, the UPU's maintenance of its application for interpretation and review after the full execution of the judgment is not an abuse of process, nor is it considered frivolous, and the complainant's counterclaim for moral damages must be rejected.

12. With regard to the application for execution, the UPU contests its receivability on the ground that the complainant received the payment due on 25 May 2018 and submits that, according to the case law, the practise is to let the organization have a reasonable amount of time to execute a judgment. It also contends that the application is unfounded as the UPU has taken the proper steps to comply with the Tribunal's decision.

13. The application for execution is receivable. The 26 March 2018 letter from the Deputy Director General to the complainant essentially informed her that the UPU disagreed with the Tribunal's Judgment 3927 and had filed an application for interpretation and review. It stated *inter alia* that the UPU must "await the outcome of the review process before the [Tribunal] as well as the final deliberation and decision" of the Council of Administration which would be meeting in April 2018.

In light of this, and considering that the complainant only received the payment four months after the public delivery of the judgment, the present application for execution is not moot. In any case, the order contained in the decision of Judgment 3927 was clear and the application for review did not suspend the execution of the judgment (see Judgment 1620, consideration 7). The execution depended on the payment of an established amount of money and the UPU had to execute the judgment within one month from the date of its delivery (see Judgment 3152, consideration 20).

14. In light of the above, the Tribunal orders the UPU to pay the complainant, within one month of the date of the public delivery of the present judgment, interest on the amounts paid at the rate of 5 per cent per annum from one month from the date of the public delivery of Judgment 3927 (24 January 2018) until the date of final payment (25 May 2018).

15. The unnecessary delay in executing Judgment 3927 has caused the complainant moral injury, for which she is entitled to moral damages that the Tribunal sets in the amount of 1,000 Swiss francs. The complainant is also entitled to costs in the total amount of 7,000 Swiss francs for these two applications.

#### DECISION

For the above reasons,

1. The UPU's application for interpretation and review is dismissed.
2. The UPU shall pay the complainant 5 per cent interest in accordance with consideration 14, above.
3. The UPU shall pay the complainant 1,000 Swiss francs in moral damages.
4. The UPU shall also pay her 7,000 Swiss francs in costs.
5. All other claims and counterclaims are dismissed.

In witness of this judgment, adopted on 8 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Patrick Frydman, Vice-President, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

PATRICK FRYDMAN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ