

**ADMINISTRATIVE TRIBUNAL OF THE
AFRICAN DEVELOPMENT BANK**

QUORUM :	Justice Mohammed Bello,	President
	Professor Maurice Glélé Ahanhanzo,	Vice-President
	Justice Lombe Chibesakunda,	Member
	Justice Pio Marapi Teek,	Member
	Professor Christian Tomuschat	Member

Application for interpretation of judgment N° 2001/03

J. N. N., Applicant
African Development Bank, Respondent

Judgment of the Tribunal – delivered on Friday 19 December 2003

THE FACTS

This application was filed by the Respondent in pursuance of Article XII.3 of the Statute of the African Development Bank and Rule XXIII of our Rules of Procedure requesting for the interpretation of our judgment in the substantive Application n° 2001/03 delivered on 19 July 2002.

1. The Applicant in the said substantive Application joined the services of the Respondent in 1982 and was the Stock Controller when the Bank audit discovered large quantity of paper reams missing from the stocks in October 1998.
2. The Bank suspected the Applicant, *inter alia*, of the theft of the paper reams and reported to the Police. Further, the Bank lifted the diplomatic immunity of the suspects to enable the Police to carry out proper investigation.
3. Nevertheless, on 18 November, 1998, the Bank appointed a Committee of Enquiry to conduct internal investigation and the staff members, including the Applicant, were suspended without pay pending the internal investigation.

4. On 20 May 1999, after having considered the Report of the Committee of Enquiry, the Respondent terminated the Applicant's service by reason of being unsatisfactory. The Respondent paid the Applicant all of the salaries and benefits in respect of the period of suspension from November 25, 1998 to April 25, 1999 as well as the termination benefits to which he was entitled by virtue of Regulation 6.12.4 of the Staff Regulations.
5. It is noteworthy that the Disciplinary Committee of the Respondent, to which the matter had been referred, had acquitted the Applicant of the theft of the paper reams and had also cleared him of negligence in connection with the theft.
6. After having exhausted the administrative remedies available to him, the Applicant had come to the Tribunal challenging the decision of the Bank dismissing him on 20 May 1999 for unsatisfactory performance. The Tribunal delivered judgment in his favour.

THE REQUEST FOR INTERPRETATION

7. The operative parts of the judgment of which interpretation is sought are paragraph 59, which states that the decision of the Respondent terminating the Applicant for unsatisfactory performance should be set aside, and paragraph 61, which reads as follows :

“61.The Tribunal concludes that this Application is well-founded. In pursuance of Article XIII.1 and 2 of the Statute of the Tribunal, in the exercise of the Tribunal's power to ascertain the financial consequences of the above established irregularities, and having regard to the circumstances of the case, the Respondent shall pay to the Applicant the equivalent of three years of his annual salary as compensation and \$ 3000 US Dollars as legal costs. The Respondent shall also restore his personal effects”.

8. Counsel for the Respondent submitted that the paragraphs of the Judgment cited above, particularly when read together with the provisions of Article XIII.1 and 2 of the Statute, raise elements of ambiguity or obscurity which require clarification for the purposes of ensuring proper execution of the Judgment. Specifically, the Respondent seeks clarification :

- (1) Whether paragraph 59 of the Judgement rescinded, pursuant to Article XIII.I, the decision of the Respondent to terminate the service of the Applicant for unsatisfactory performance and whether it required his integration into the services of the Respondent?;
- (2) Whether the compensation awarded in paragraph 61 of the Judgment was awarded, pursuant to Article XIII.I of the Statute, as a separate measure to correct the effects of the termination, in addition to the rescission of the termination or pursuant of Article XIII.2 as an option in the event the Respondent would not reintegrate him;
- (3) Whether the compensation awarded in paragraph 61 of the Judgment was inclusive of or in addition to the termination benefits received by the Applicant.

9. Counsel for the Respondent argued that a reasonable interpretation of the Judgement may be that since the decision of the Respondent terminating the employment of the Applicant was rescinded, the Applicant was entitled to reinstatement and the compensation awarded was to correct the effect of the impugned decision in accordance with the provision of Article XIII.I. Alternatively, the Judgment may be interpreted to mean that the compensation was in lieu of reinstatement under the provisions of Article XIII.2

10. Further, Counsel submitted that whichever of the two interpretations applies, the compensation awarded by the Tribunal should be inclusive of the amount of termination benefits received by the Applicant. He based his submissions on two reasons :

- (1) The underlying premise of the remedies prescribed in Article XIII.I and 2 of the Statute is the rescission of the contested administrative decision. It would therefore appear that payments received on the basis of the rescinded decision should be refunded.

(2) It is obvious that payment of termination benefit is incompatible with reinstatement. If the Applicant were to be reinstated, he would be required to refund the termination benefits received. Accordingly, since the maximum compensation under Article XIII.2 was granted in lieu of reinstatement, it should not be as additional to termination benefits.

11. At the end of his oral submission Counsel for the Respondent indicated to the Tribunal that he would be happy “if the order for the payment of “three years of his annual salary as compensation” means “pay compensation of 3 years salary as damages in lieu of reinstatement on top of the termination benefits already paid”.

12. It appears the Respondent Counsel has abandoned his submission on the inclusiveness of the termination benefits in the compensation awarded by the Tribunal.

APPLICANT’S SUBMISSION

13. The submission of Counsel for the Applicant is short and precise. He stated the basic principle for the interpretation of any document or Statute which is first to understand its plain, ordinary or literal meaning in relation to the context in which the words or phrase have been used. When this has been done and no ambiguity arises as to what the author of the document on judgment meant, then no ambiguity should be read into the document. He referred to paragraphs 59 and 61 of the Judgment and concluded that the Judgment read as a whole was clear and unambiguous and the Respondent must give effect to it since the decision of the Bank had been quashed. He relied on In Re Der Housepian (N°2) Judgment ILOAT 1306 (1994)

THE LAW

14. Article XII.3 of the Statute provides that the Tribunal may interpret or rectify any of its judgments whose terms appear obscure or incomplete or which contains a typographical or a arithmetical error.

15. In accordance with our Rule XXIII, after a judgment has been rendered, a party may within sixty days of notification of the judgment, apply to the Tribunal requesting an interpretation of the operative provisions of the judgment. The Rule proceeds to prescribe :
 - “2. The application shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete.

 - “3. The Tribunal shall, after giving the other party or parties a reasonable opportunity to present its or their views on the matter, decide whether to admit the application for interpretation. If the application is admitted, the Tribunal shall issue its interpretation, which shall thereupon become part of the original judgment.”

16. The Tribunal is satisfied that the application for the interpretation of the Judgment has stated sufficient particularity that makes the operative provisions of the judgment appear to be obscure or incomplete. As contended by Counsel for the Respondent, the operative part of the Judgment is capable of two meanings. It may be construed as to reinstate the Applicant in addition to the award of the compensation. The other construction is that the compensation is in lieu of reinstatement. Having heard the views of Counsel for the Applicant on the matter, the Tribunal hereby admits the application for interpretation on the issue of construction.

17. With regard to the question as to whether the termination benefits were inclusive in the compensation, that issue has been abandoned and accordingly the Tribunal has decided not to admit it for interpretation.
18. In his letter of 14 December 2002, the President of the Tribunal informed the parties that in its deliberation in writing the judgment, the Tribunal had fully considered whether to order the reinstatement of the Applicant under Article XIII.I of the Statute and decided that, having regard to the circumstances of the case, it was not appropriate to make the order.
19. The circumstances of the case were set out in the judgment, particularly the negative attitude of some senior members of the Management against the Applicant after the discovery of the theft. For that reason, in lieu of reinstatement, the Tribunal awarded the highest compensation permitted by Article XIII.2 of the Statute for moral and psychological damage suffered by the Applicant from wrongful accusations of incompetence, theft and suspension coupled with the financial loss caused by the wrongful termination of his employment.
20. It follows from the foregoing that the operative part of the judgment, to wit: “The Respondent shall pay to the Applicant the equivalent of three (3) years of his annual salary as compensation” needs to be rectified in order to remove the obscurity or ambiguity of the judgment. The words “ in lieu of reinstatement” shall be added to the operative part immediately after the word” compensation”.

CONCLUSION

21. Accordingly, the Tribunal concludes that the operative part of the judgment means “the Respondent shall pay to the Applicant the equivalent of three years of his annual salary as compensation in lieu of reinstatement.”

Honourable Justice Mohammed Bello - President.

Albertine Lipou Massala - Executive Secretary.

COUNSEL FOR THE APPLICANT :

Miss Effiba Amihere (Esq) - absent
Brefo John - absent
Peter Njang P.C - absent

REPRESENTATIVE OF THE RESPONDENT

N/A

COUNSEL FOR THE RESPONDENT :

Mr. George Aron.

Assisted by

Ms. Cecilia Akintomide.