
ADMINISTRATIVE TRIBUNAL

Judgement No. 429

Case No. 462: BEYELE

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Roger Pinto, Vice-President, presiding;
Mr. Ahmed Osman; Mr. Francisco A. Forteza;

Whereas, on 18 January 1988, François Tewane Beyele, a former staff member of the United Nations, filed an application that did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed his application on 11 April 1988;

Whereas the pleas of the application read as follows:

"Section II and conclusion

The Applicant requests the Tribunal to take the following measures:

- A. Uphold the recommendation of the Joint Appeals Board, to reinstate him to his position at the ECA [Economic Commission for Africa];
- B. Order payment of compensation retroactively from 14 May 1986 to the date on which he will resume employment;
- C. Compensate for moral disturbance and humiliation, to be assessed by the Tribunal."

Whereas the Respondent filed his answer on 26 July 1988;

Whereas the facts in the case are as follows:

François Tewane Beyele, a national of the Central African Republic, entered the service of the United Nations Economic Commission for Africa (ECA) on 3 July 1975 as an Associate Economic Affairs Officer. During the course of his employment with ECA the Applicant served at Addis Ababa. He has three children: Gladys, Bruno and Christelle.

The Applicant, being an international recruit, was entitled to an education grant in respect of each child in full attendance at a school, university or similar educational institution. Two of the Applicant's children (Gladys and Bruno) were enrolled in French public schools in Paris.

Education grant payments are calculated on the basis of certificates of attendance and cost bearing the seal of the school and signed by one of its representatives and indicating the dates of the child's attendance and the amounts actually paid to the institution. These in turn are certified by the staff member on the "Request for settlement form" as being true to the best of his or her knowledge and belief. Education grants are paid on the basis of this double certification, by the school and by the staff member.

On 23 June 1983, the Applicant filed a claim for education grant for his three children, attaching to the claim forms apparently filled in and signed by employees of the schools attended by his children, with a detailed breakdown of the total costs paid.

The Applicant claimed the sum of 39,550 French francs in respect of his son Bruno who attended the Lycée Honoré de Balzac; 38,050 French francs in respect of his daughter Gladys, who attended the Lycée Claude Bernard; and 36,750 French francs in respect of his daughter Christelle, who attended the Ecole Mixte.

In 1983, the ECA Administration, prompted by a suspicion that the Applicant's claims for the 1982/83 school year were too high, requested the three schools to confirm that they had been paid the above-mentioned amounts by the Applicant. Two of the schools replied. The Headmaster of the Lycée Claude Bernard denied having received the amount of 38,050 French francs. The Headmaster of the Lycée Honoré de Balzac noted that education is free in French public schools and that parents pay only the cost of textbooks, school supplies, transportation and half board. The Applicant's son Bruno

"was not a boarder"; the cost of textbooks should have been in the range of 600-800 French francs and as far as transportation was concerned, the cost of an orange card for travel by underground was 120 French francs per month. In addition, he asserted that the certificate submitted by the Applicant had indeed been signed by the school authorities, but that the information concerning costs had been inserted at a later date. No information was received from the school attended by Christelle.

The Applicant was informed of these discrepancies and was asked to provide his comments. He was also given a copy of all correspondence received from the schools.

The ECA Administration considered that the Applicant's explanations were not satisfactory, and consequently on 12 March 1984, the Chief of the Personnel Section informed the Applicant that, in accordance with the provisions of Personnel Directive 1/76, he had appointed an ad hoc disciplinary committee to investigate the case. The Applicant was informed of the charges against him, provided with a copy of PD/1/76 and advised of his right to choose a staff member to assist him in defending himself during the investigation.

The Ad Hoc Committee interviewed the Applicant and members of the Personnel Section. The Committee concluded that in the circumstances of the case the Applicant could not vouch for the authenticity of any of the receipts sent to him by his wife. The Committee was of the view, however, that as a staff member of the Organization, the Applicant was fully responsible for any irregularities in the claims he submitted for education grants.

In accordance with the procedure set forth in PD/1/76, paragraph 2 (e), on 11 December 1985, the Executive Secretary prepared his report on the investigation. In his personal evaluation of the circumstances of the case, the Executive Secretary concluded that it was "obvious that the staff member actually contrived knowingly to present forged documents to support inflated claims and actually managed in this way to defraud the Organization" and that the Applicant was guilty of all the charges brought against him.

On 12 December 1985, the Chief of the ECA Personnel Section transmitted to the Applicant the Ad Hoc Committee's report and the

report of the Executive Secretary, and asked him to provide his comments on both reports; the Applicant submitted his comments on 20 December 1985. The Applicant disputed the Executive Secretary's conclusion that the charges against him had been proved, claiming it was contrary to the Committee's conclusion.

On 30 December 1985, the former Chief of the ECA Personnel Section transmitted the Applicant's comments to the Executive Secretary and concluded that the Applicant was guilty. He recommended that the Applicant be dismissed for misconduct. The Executive Secretary accepted the recommendation and transmitted it to the United Nations Headquarters, together with the Ad Hoc Committee's report, his own evaluation of the case and the Applicant's comments.

After reviewing the case, the Assistant Secretary-General concluded that the Applicant had been guilty of serious misconduct, warranting disciplinary action. On 8 April 1986, he recommended to the Under-Secretary-General for Administration and Management that the Applicant be dismissed for misconduct in accordance with staff rule 110.3 (b). The Under-Secretary-General approved the recommendation on behalf of the Secretary-General on 21 April 1986.

On 23 April 1986, the Applicant was informed of this decision.

On 9 June 1986, the Applicant requested the Secretary-General to review the administrative decision to dismiss him for misconduct.

On 10 November 1986, he lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 15 July 1987. Its findings and recommendations read as follows:

"Findings and recommendations

39. The Panel unanimously:
40. Finds that the medical condition invoked by the Applicant constitutes an exceptional circumstance within the meaning of staff rule 111.2 (e) and therefore justifies the waiving of the time-limit specified in staff rule 111.2 (b);
41. Finds that the requirements of due process were not sufficiently satisfied for the following reasons: (i) the investigatory process was not thorough enough, and was conducted without the benefit of information required from the Personnel Section; (ii) the report by the Head of the Office was finalized before the report of the Ad Hoc Disciplinary Committee was signed by all its members; and

(iii) the conclusions of facts reached by the Head of the Office went far beyond those of the Committee;

42. Finds that it had not been proven to the Panel's satisfaction that the Applicant acted to defraud willingly and knowingly the Organization;
43. Finds that the Applicant did not produce any convincing evidence that the contested decision was motivated by prejudice or by some other extraneous factor;
44. Finds that the Applicant was grossly negligent as he did not verify and ascertain the accuracy of his claims for education grant.
45. Recommends:

- That the Secretary-General reconsider his decision to dismiss the Applicant and reinstate the Applicant without retroactive effect;
- That in view of the gross negligence shown in his handling of his claims for education grant, which reflects on his qualities as a responsible staff member, the period between his effective separation date and the date of his reinstatement be treated as though the Applicant was suspended without pay.

Final remark

46. The Panel, aware of the fact that similar cases have been brought before the Joint Appeals Board, is of the unanimous opinion that such cases should be examined together by a special panel or other reviewing body in order to ensure the consistency of the proceedings and recommendations pertaining to those cases."

On 6 January 1988, the Assistant Secretary-General for Human Resources Management¹ transmitted the JAB's report to the Applicant and informed him that:

"So far as possible, the Secretary-General accepts the findings of unanimous Boards, and he has been acting on that premise except where he is of the opinion that a major question of law or of principle is involved. In this case, he has concluded that the Board is wrong, as a matter of law, in recommending that the decision to dismiss you should be overturned because of procedural defects connected with the proceedings of the investigatory board established by ECA. In his opinion, such defects were not such as to affect the

¹ Successor OPS.

substance of the questions at issue, and were, in any event, subsequently remedied by an independent review carried out at Headquarters, where the decision to dismiss was taken. Accordingly, and having re-examined your case in the light of the Board's report, he has decided to maintain the decision to dismiss you from the Organization, effective 14 May 1986, for misconduct as a disciplinary measure under staff rule 110.3 (b). The Secretary-General's decision is based on his conclusion that you submitted fraudulent education grant claims thereby receiving substantial overpayments."

On 11 April 1988, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The allegations against the Applicant have not been proved.
2. The Applicant, living far away from his family, could not know that the documents he signed were forged.
3. The circumstances in which he made his error do not constitute gross negligence.
4. The proper procedure was not followed.

Whereas the Respondent's principal contentions are:

1. The Charter of the United Nations and the Staff Regulations oblige the Secretary-General to select and retain staff of the highest standards of integrity and, therefore, he has the responsibility of determining definitively whether a staff member meets that standard.
2. The dismissal of the Applicant was preceded by ample opportunity for the Applicant to state his case and the actual decision was not improperly motivated.

The Tribunal, having deliberated from 14 October 1988 to 28 October 1988, now pronounces the following judgement:

- I. The Applicant entered the service of the United Nations on 3 July 1975 as an Associate Economic Affairs Officer. He served with the United Nations Economic Commission for Africa (ECA) at Addis Ababa. His wife and his three school-age children lived in Paris.

II. The Applicant was entitled to an education grant for each child. He filed a claim for reimbursement of his education expenses, together with supporting documents obtained by his wife. In 1983 these expenses (for the school year 1982/83) amounted to 39,550 French francs for his son Bruno; 38,050 French francs for his daughter Gladys; and 36,750 French francs for his daughter Christelle. The Applicant admits that these amounts in no way corresponded to the costs he had had to pay. As a person who had studied at French primary and secondary schools and higher education institutions he could not be unaware that those amounts were out of all proportion to the education costs defrayed by parents in a system based on free education.

III. The Secretary-General considered that these facts constituted serious misconduct, warranting disciplinary action under staff rule 110.3 (b). By a decision of 21 April 1986, notified to the Applicant on 23 April, the Secretary-General dismissed the Applicant as a disciplinary measure. In accordance with staff rule 109.3 (a) and (c), the decision granted the Applicant compensation in the amount of three months' salary in lieu of notice but denied him the termination indemnity provided for in paragraph (c) of annex III to the Staff Regulations.

IV. The Applicant maintains on the one hand, that the Secretary-General's decision was taken following a procedure, which failed to satisfy the requirements of due process, and on the other, that in deciding on termination as a disciplinary measure the Secretary-General exceeded his powers.

V. In his pleas, the Applicant requests the Tribunal to decide that the Respondent should reinstate him in his position with ECA without retroactive effect; pay him compensation for the injury sustained by him from 14 May 1986 to the date of his reinstatement; and pay him compensation for the moral injury sustained, to be assessed by the Tribunal.

VI. The Applicant's case was considered by the Chief of the ECA Personnel Section, by an Ad Hoc Disciplinary Committee, by the Executive Secretary of ECA, and lastly by the Joint Appeals Board. At all stages of the procedure he could, and did, state his case. The Tribunal notes, moreover, that it was not the facts which were contested but only their interpretation. It cannot, therefore, agree with the view of the Joint Appeals Board that the investigation conducted by the Ad Hoc Disciplinary Committee was not thorough enough. Even if that had been the case, the procedural inadequacies could have been remedied by the Joint Appeals Board. Counsel for the Applicant presented his defence both in writing and at the oral proceedings held by the Joint Appeals Board.

VII. It is no doubt regrettable, as the Joint Appeals Board observed, that the report of the Executive Secretary of ECA was finalized before the report of the Ad Hoc Disciplinary Committee had been signed by the third member of that Committee. However, the delay in the formality of signature exerted no unfavourable influence on the decision taken against the Applicant (cf. Judgement No. 380, Alam (1987), para. X; Judgement No. 387, Mostafa (1987), para. VI). The Joint Appeals Board noted this in finding "that the Applicant did not produce any convincing evidence that the contested decision was motivated by prejudice or by some other extraneous factor".

VIII. The Tribunal therefore considers that the procedure followed in the Applicant's case is not vitiated by the absence of due process.

IX. With regard to the merits, the Tribunal recalls that, in exercising his disciplinary authority, the Secretary-General possesses wide discretion as regards both the evaluation of the facts and the disciplinary measure to be imposed. Furthermore, the Secretary-General is not bound by the opinions submitted to him by a disciplinary panel or by the Joint Appeals Board. (Cf. Judgement No. 210, Reid (1976), para. II; Judgement No. 394, Armijo (1987), para. IV).

X. Even if it is acknowledged, as the Joint Appeals Board notes in its findings, "that it had not been proven to the Panel's satisfaction that the Applicant acted to defraud willingly and knowingly the Organization", the Secretary-General may reach a different and even contrary conclusion in his evaluation of the facts. The Tribunal has no grounds for finding that this interpretation by the Secretary-General was prompted by any animosity towards the Applicant.

XI. Moreover, the "gross negligence" shown by the Applicant, the existence of which was acknowledged by the Joint Appeals Board, provided the Secretary-General with a sufficient basis for imposing a disciplinary measure.

XII. The Tribunal therefore considers that in the light of the established facts the Secretary-General was fully justified in imposing a disciplinary measure.

XIII. As to the choice of disciplinary measure - dismissal - this falls within the discretionary authority of the Secretary-General. The Joint Appeals Board recommended that the Applicant should be suspended without pay for the period between his effective separation date and the date of his reinstatement. The Secretary-General was not bound by that recommendation. He could have imposed a more lenient disciplinary measure or a more severe one, as he indeed saw fit to do. The Applicant has not mentioned any special circumstance that might vitiate the disciplinary measure imposed in his case. As the Joint Appeals Board acknowledged, the contested decision was not motivated by prejudice or by some other extraneous factor.

XIV. For these reasons, the Tribunal decides that:

1. The decision to dismiss the Applicant for misconduct as a disciplinary measure taken by the Secretary-General on 21 April 1986 is valid and has not violated any right of the Applicant.

2. The Applicant's pleas for reinstatement and compensation are therefore rejected.

XV. All the other pleas of the Applicant are rejected.

(Signatures)

Roger PINTO
Vice-President, presiding

Ahmed OSMAN
Member

Francisco A. FORTEZA
Member

New York, 28 October 1988

Executive Secretary R. Ma