

---

ADMINISTRATIVE TRIBUNAL

Judgement No. 448

Case No. 441: LARGE

Against: The United Nations Relief  
and Works Agency for  
Palestine Refugees in the  
Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Arnold Kean, President; Mr. Jerome Ackerman,  
Vice-President; Mr. Ioan Voicu;

Whereas, on 31 December 1986, Robert W. Large, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter called UNRWA, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 10 September 1987;

Whereas, in section II(a) of his application, the Applicant requested the Tribunal to order various preliminary measures;

Whereas sections II(b) to II(e) of the application read in part as follows:

"(b)Applicant is contesting;

(i) Periodic Reports Review Committee's decisions ... that:

(A) 'The Committee was unable to identify any specific defect in the periodic report' - ... - 'to justify an alteration or amendment of the record.' AND, that

(B) 'The Committee also found that despite allegations

to the contrary, Agency officials had shown ... integrity in dealing with the issues raised by Mr. Large.'

- (ii) Commissioner-General's decision that:  
'the appraisal of the Periodic Reports Review Committee ... (is not) an 'administrative decision affecting (Applicant's) rights which is capable of being canvassed within the terms of staff rule 111.3 ...'.

- (iii) Periodic Reports Review Committee's decision that:  
'... the Agency considers that no useful purpose would be served by further correspondence on the subject of your (Applicant's) terminal report.'

#### SECTION II (c)

Applicant is invoking the following obligations:

- (i) Applicant's letter of appointment '... subject to the provisions of the Staff Regulations and Staff Rules ...'
- (ii) That, (Staff) '... Regulations embody fundamental conditions of service and the basic rights, duties and obligations, of the Agency's International Staff members. The Commissioner-General will provide and enforce such Staff Rules consistent with the principles set forth in these Regulations as the Commissioner-General considers necessary.'
- (iii) Regulation 1.9: Staff members shall subscribe to the following oath or declaration:  
'I solemnly swear ... to exercise in all loyalty discretion and conscience the functions entrusted to me as an official of the United Nations Relief and Works Agency ..., to discharge these functions and regulate my conduct with the interests of the Agency only in view ...'
- (iv) Regulation 4.3: 'The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity for securing the highest standards of efficiency, competence and integrity ...'
- (v) Regulation 11.1: 'The Commissioner-General shall establish administrative machinery with staff participation to advise him in case of an appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules' ...
- (vi) Staff rule 112.6:-Service and Conduct Reports- reads:  
'In the salary levels below the Principal

Officer(D-1), the service and conduct of a staff member shall be the subject of reports, made from time to time by the staff member's supervisors. Such reports, which shall be shown to the staff member, shall form a part of his or her permanent cumulative record' ...

- (vii) International Staff Personnel Directive I/112.6/15, and its annexes I, II and III, on the Performance Evaluation Report System ...
- (viii) Staff rule 109.9: Certification of Service ...
- (ix) Staff rule 111.1: Joint Appeals Board ...
- (x) Staff rule 111.3: Procedures of the Joint Appeals Board ...
- (xi) Staff rule 112.3: Financial Responsibility ...
- (xii) Universal Declaration of Human Rights, articles 7,8,10 and 12 ...

Applicant requests two years net base salary, at his P5, step 2, grade with UNRWA from August 1, 1982.

Section II (e)

- (i) Refund by the Respondent of Applicant's itemized expenses in this case, against submission of accounts, which are, now, about £ 3000.
- (ii) Issue by the Respondent of a Certificate of service, referring to the quality of Applicant's work and of his official conduct, under staff rule 109.9 ... to replace Certificate of Service issued on 11 August 1983 ...
- (iii) Issue of a letter by Respondent to Applicant, stating that Director of UNRWA AFFAIRS Report on Applicant dated 10.1.1984 ... was not properly completed according to prescribed procedures set out in the Personnel Directive ...: that the Report was therefore invalid: and that, therefore any reference given by the Agency -the Respondent- about Applicant's work while Deputy Director in the Lebanon will be based on Mons. Prevot's satisfactory, C-rated, Report ... and on DUA,L, Mr. Defrates' letter of 23.11.1982 ...
- (iv) Applicant requests the Tribunal to allow him to apply for a revision of Judgement 331 of 28.5.1984, under Article 12 of the Statute, if the Tribunal finds that the report of DUA,L, Mr. Defrates of 10.1.1984 ..., and the appraisal by the PRRC of Applicant's rebuttal of Mr. Defrates' report ... did not observe prescribed procedures set out in the Personnel Directive ... ."

Whereas the Respondent filed his answer on 14 April 1988;

Whereas, on 16 November 1988, the Executive Secretary of the Tribunal informed the Applicant that the Tribunal had decided to

adjourn its consideration of the case until its Spring session to be held in Geneva in May 1989 and that the President of the Tribunal had ruled that no oral proceedings would be held in the case;

Whereas the Applicant submitted additional documents or observations on 5, 6, 7 and 12 May 1989;

Whereas the facts in the case subsequent to the statement of facts contained in Judgement No. 331 are as follows:

On 10 January 1984 a performance evaluation report for the period 1 June 1982 - 23 November 1982 was prepared by Mr. Defrates in which the Applicant's performance was described as one "that does not fully meet standards". On 17 February 1984 the Applicant submitted to the Periodic Reports Review Committee (PRRC) a statement in rebuttal of his performance evaluation report. The Applicant's rebuttal was sent to the two reporting officers, namely Mr. Defrates, who submitted his comments in a memorandum dated 5 April 1984, and the Director of Personnel and Administration, who had no comments to add. On 25 April 1984 the Secretary of the PRRC sent a copy of Mr. Defrates' memorandum of 5 April 1984 to the Applicant and informed him that

"The various points raised in your [rebuttal] have also been reviewed by the PRRC and I am instructed to advise you that the Agency considers that no useful purpose would be served by further correspondence on the subject of your terminal report."

On 24 May 1984 the Applicant requested the Commissioner-General of UNRWA to review the "administrative decision", communicated to the Applicant on 25 April 1984, denying him the right to submit his final comment under paragraph 13 of International Staff Personnel Directive (ISPD) No. I/112.6/15. On 19 June 1984 the Commissioner-General replied that there had been no such administrative decision, that as far as the substance was concerned the requirements of the Directive had been met, but that he was nevertheless prepared to ask the PRRC to consider a further but

final comment from the Applicant.

On 5 July 1984 the Applicant lodged an appeal with the International Staff Joint Appeals Board of UNRWA against the decision communicated to him on 25 April 1984. On 26 July 1984 the Acting Commissioner-General again asked the Applicant to submit his final comment. On 11 October 1984 the Director of Personnel pointed out in a letter to the Joint Appeals Board that there could be no written appraisal by the PRRC until and unless the Applicant submitted his final comment. The Joint Appeals Board adopted its report on 7 November 1984. The Board's conclusions and recommendations read as follows:

"Conclusions and Recommendations

The Board came to the conclusion that, contrary to the Appellant's contention, there was no administrative decision to bar the Appellant from his rights of rebuttal as confirmed in the Commissioner-General's letter of 19 June and the Acting Commissioner-General's letter of 26 July to the Appellant and by the Director of Personnel's letter to the Board of 11 October. Until the correct rebuttal procedures are completed, which require the second reporting officer also to submit his comments, as laid down in ISPD I/112-6/15 para. 13, the Board is therefore of the opinion that there are no grounds for an appeal.

The Board recommends to the Commissioner-General that the Appellant be invited once again, after the correct procedures referred to above have been completed, to submit his final comment to the PRRC for its review and written appraisal."

The Commissioner-General accepted the Board's recommendation and, on 10 December 1984, reiterated to the Applicant the request that he make his final comments on Mr. Defrates' report of 10 January 1984.

On 13 February 1985 the Applicant submitted detailed comments to the PRRC. The PRRC made a written appraisal of the Applicant's submission and its Secretary sent it to the Applicant on 24 June 1985. In its appraisal, the PRRC concluded that it had been unable to identify any specific defect in the periodic report to justify an alteration or amendment of the record and that it had also found

that, despite allegations to the contrary, Agency officials had shown restraint and integrity in dealing with the issues raised by the Applicant. On 16 July 1985 the Applicant requested the Commissioner-General to review the PRRC's administrative decision, a request which was turned down on 8 August 1985.

On 23 August 1985 the Applicant accordingly lodged a second appeal with the International Staff Joint Appeals Board of UNRWA. On 6 June 1986 the Board submitted its report, which read in part:

- "6. ... the Board noted that certain irregularities did seem to have occurred in connection with the procedures which should be followed on periodic reporting. The Board felt it its duty to include its findings on these matters in its report as a matter of record:
- (a) The fact that a proper periodic report on the Appellant's performance covering the period May to November 1982 was not completed until requested by the Appellant himself in September 1983 was to be regretted;
  - (b) The report was finally completed in January 1984 and accepted by the PRRC, although, in the Board's opinion, the ratings given in points 2, 6, 11 and 12 of Section III, were not substantiated by sufficient explanations or examples, as expressly required in the preamble to Section III, particularly in consideration of the last sentence of the said preamble, i.e. 'A report will not be considered complete unless such comments are given in respect of each rated item.'
  - (c) Once the report had been completed and the Appellant had presented his rebuttal, upon which the reporting officer had commented, the Board was disturbed to note that the PRRC had then informed the Appellant that 'no useful purpose would be served by further correspondence on the subject of (his) terminal report'. This was not in accordance with the relevant Personnel Directive and the Appellant was in fact entitled to submit a further comment. The Board noted that the Appellant did write to the Secretary of the PRRC requesting to be allowed to submit his final comment and to receive a written appraisal by the PRRC, to which he received no answer.
  - (d) At a later date, after the Commissioner-General had over-ruled its decision, the PRRC did produce its final appraisal in writing in which it declared that it 'was unable to identify any specific defect in the periodic

report to justify an alteration or amendment of the record.' In view of its findings, as stated above in 6(b), the Board finds it difficult to agree with such a conclusion.

7. CONCLUSIONS AND RECOMMENDATION

Notwithstanding the comments made above, and with the dissention of one Member, whose opinion is attached, the Board recommends to the Commissioner-General that the appeal be dismissed.

8. Further to the recommendation, however, the Board unanimously agreed to request the Commissioner-General that measures be taken to ensure for the future that:-

(a) Where there is a need for a Periodic Report, such a Report as defined in the International Staff Personnel Directive No. I/112.6/15 must be prepared. No documents of any kind purporting to substitute for such a Periodic Report should be accepted by the PRRC; and

(b) The PRRC only accepts Periodic Reports that are prepared in accordance with the International Staff Personnel Directive in force and where they deviate, they should be returned to the Reporting Officer; and

(c) Reporting Officers should follow the procedures laid down in the relevant International Staff Personnel Directive and the PRRC should ensure that these procedures are strictly adhered to."

The dissenting opinion, dated 31 July 1986, read in part as follows:

"As the Staff elected representative on the International Staff Joint Appeals Board, I am deeply concerned over certain aspects of this case and, in accordance with rule 111.3 (j) of the International Staff Regulations and Rules, I wish to record a dissenting opinion as I feel it my duty to disagree with the conclusion arrived at by my colleagues on the Board.

In particular, I believe that contrary to what the Director of Personnel has stated ..., the point at issue is not so much whether the Administration was right in not renewing the Appellant's fixed-term appointment (that was already dealt with by the United Nations Administrative Tribunal), as why have there been lapses in the implementation of the prescribed procedures laid down for reviewing periodic

reports and rebutting the case brought by the Appellant when he challenged particular defects in the periodic report, which was ultimately completed on 10 January 1984, and alleged that the Administration did not conduct with the required fairness and candour the review of his appeal.

To my knowledge, the Administration has not yet rebutted the Appellant's specific allegations of non-observance of prescribed procedures by the reporting officer and the PRRC, some of which have been noted by the Board in paragraph 6 of its report to the Commissioner-General.

In my view - and I believe that it is widely shared among the International Staff of the Agency - Personnel Department is ultimately responsible for seeing to it that principles and procedures set out in International Staff Personnel Directive I/112.6/15 are strictly observed by all concerned in preparing periodic reports and reviewing them.

I, therefore, recommend to the Commissioner-General that effective steps be taken to ensure stricter adherence to the principles and procedures laid down in the above-mentioned International Staff Personnel Directive and that any deviation therefrom - be it in the past or in the future - be properly explained and rectified to the extent possible. As the elected Staff representative on the International Staff Joint Appeals Board, I attach a particular importance to this recommendation."

On 27 August 1986 the Commissioner-General informed the Applicant that he accepted the Joint Appeals Board's recommendation that the Applicant's appeal be dismissed. On 31 December 1986 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The performance evaluation report contested by the Applicant was improperly prepared, improperly drafted and improperly reviewed. It gave a distorted, arbitrary and capricious appraisal of the Applicant's performance and conduct. The Applicant was not given a fair hearing in its efforts to rebut it and the prescribed rebuttal procedures were not observed.

2. Administrative decisions taken in the Applicant's case disregarded his terms of appointment, including the Staff



Regulations and Rules, Personnel Directives and Instructions.

Whereas the Respondent's principal contentions are:

1. The proper procedures were followed in evaluating the Applicant's performance.

2. As no credible evidence of prejudice has been adduced, the Commissioner-General's assessment of the Applicant's performance must stand.

The Tribunal, having deliberated on 8 November 1988 in New York and from 8 to 26 May 1989 in Geneva, now pronounces the following judgement:

I. The Tribunal notes that in 1983 the same Applicant brought before the Tribunal a case which was considered and decided on 28 May 1984 in Judgement No. 331.

II. In the present application, the Applicant has asked for an oral hearing. His request has been denied as the available documentation is adequate for reaching definite conclusions.

III. The Applicant has also asked the Tribunal to require a number of persons to inform the Tribunal in writing about various aspects of the case.

The Tribunal, after having gone through the considerable material before it, has concluded that the Applicant's request for additional documentation from the persons listed by him cannot be entertained. In all important aspects, the documentation contained in the file is adequate and additional written details of events which happened more than five years ago are not necessary.

IV. Before examining the substance of the case, the Tribunal wishes to comment on a specific feature of the appeals made by the Applicant.

In spite of efforts made by the Applicant to collect and collate numerous documents and the remarkable assiduity with which he prepared his case with all its minutiae, his application remains in fact an attempt to have the Tribunal reconsider the issues in Judgement No. 331.

V. Accordingly, the Tribunal will confine itself in the present judgement to an examination of the case as submitted by the Applicant to the International Staff Joint Appeals Board (ISJAB) on 23 August 1985, where he appealed against the decision of the Periodic Reports Review Committee (PRRC) that the procedures laid down in International Staff Personnel Directive No. I/112.6/15 had been correctly adhered to, both by the Reporting Officer and the PRRC itself, in connection with the periodic report on the Applicant's performance with UNRWA covering the period 1 June to 23 November 1982. This report rated the Applicant's performance as one that "does not fully meet standards."

VI. Although the Tribunal has not overlooked the distress sustained by the Applicant, it cannot substitute its judgement for that of the Administration concerning the standard of performance or efficiency of a staff member. However, the Tribunal is competent to pass judgement upon applications alleging non-observance of pertinent regulations and rules.

VII. The Tribunal notes that the ISJAB was convened in October 1985 to consider an appeal filed under international staff rule 111.3 by the Applicant. It further notes that the ISJAB met on several occasions to consider this appeal. On 12 February 1986 the ISJAB heard an oral presentation given by the Applicant at his request. On 6 June 1986 the ISJAB submitted its report on the appeal.

VIII. The Tribunal observes that the ISJAB "apologized for the

delay in drafting a report on its findings which was due largely to the various absences from Headquarters of each of the members and secretary and also to the complications it encountered in sifting and fully comprehending the quantity of correspondence submitted to it" by the Applicant.

In the present case, the Tribunal finds that the delay by the ISJAB in submitting its report was not due to the Respondent's negligence and therefore does not create an entitlement for the Applicant.

IX. The Tribunal further notes that, having studied all the documents pertaining to the Applicant's appeal, the ISJAB came to the conclusion that, except for the question of the procedures followed in completing the Applicant's periodic report and his subsequent rights of rebuttal, "the various other pleas he had raised in his submission had already been adjudicated upon by the United Nations Administrative Tribunal and could not therefore be taken into consideration" by the ISJAB. The Tribunal fully shares this conclusion.

X. At the same time, the Tribunal concurs with the ISJAB's finding that certain irregularities seemed to have occurred in connection with the procedures which should be followed on periodic reporting. In this respect, having considered all the evidence and arguments put forward by the parties, the Tribunal has reached a conclusion similar to that of the ISJAB and emphasizes that it is regrettable that:

(a) The proper periodic report on the Applicant's performance covering the period May to November 1982 was not completed until requested by the Applicant himself in September 1983;

(b) The ratings given in items 2, 6, 11 and 12 of the report were not substantiated by sufficient explanations or examples as expressly required in the preamble to Section III which states that

"A report will not be considered complete unless such comments are given in respect of each rated item";

(c) The PRRC had informed the Applicant that "no useful purpose would be served by further correspondence on the subject of (his) terminal report";

(d) The PRRC had concluded that it "was unable to identify any specific defect in the periodic report to justify an alteration or amendment of the record".

XI. In connection with points (c) and (d) above, the Tribunal finds it necessary to recall that, in accordance with the relevant Personnel Directive, the Applicant was entitled to submit further comments on his terminal report and to receive a written appraisal by the PRRC, which failed to produce it. It was only at a later date, after the Commissioner-General had over-ruled its decision, that the PRRC did produce its final appraisal in writing, the substance of which is reproduced under point (d) above.

XII. Having carefully examined the voluminous documentation on this issue, the Tribunal observes that the Administration did not proceed with the necessary circumspection in handling the Applicant's terminal report and disregarded International Staff Personnel Directive No. I/112.6/15. In the given circumstances, however, the Tribunal does not find any dependable evidence of prejudice and can certainly not discern any motive for hostility against the Applicant from UNRWA officials. Moreover, the Tribunal notes that the PRRC found that despite allegations to the contrary, UNRWA officials had shown restraint and integrity in dealing with the issues raised by the Applicant. The Tribunal finds that the Applicant has not met the burden of proof to substantiate his contention of prejudice and, in the absence of concrete evidence, such contention is unsustainable.

XIII. However, the Tribunal finds it advisable again to draw the

attention of the Commissioner-General of UNRWA to the need that practical and effective measures be taken to ensure that principles and procedures set out in International Staff Personnel Directive No. I/112.6/15 are strictly observed and fully complied with by all concerned in preparing periodic reports and reviewing them.

In this respect, the Tribunal recalls its Judgement No. 138, Peynado (1970), para. VI, in which it stated:

"The Staff Rules and Administrative Instructions provide a measure of protection against arbitrary assessment of the efficiency or performance of staff members. In particular, the right of rebuttal of any part of a periodic report and the procedure prescribed for handling such rebuttal afford a valuable protection to the staff member against arbitrary or prejudicial assessment".

XIV. In the circumstances and taking into account all the arguments advanced by the Applicant and the Respondent, the Tribunal concludes that the Applicant's performance has been adequately evaluated and that there is no credible evidence of arbitrary action or prejudice towards him. Moreover, the Tribunal considers the compensation awarded to the Applicant in Judgement No. 331 sufficient for the administrative deficiency discussed in this case, especially since that deficiency was of the same nature as those found in the Tribunal's earlier judgement.

The Tribunal, therefore, finds that the Applicant's claim for additional compensation is unjustified.

XV. The other claims made by the Applicant in his written observations are not before the Tribunal, as they have not been submitted to the ISJAB as required by article 7, paragraph 1 of the Tribunal's Statute.

XVI. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Arnold KEAN  
President

Jerome ACKERMAN  
Vice-President

Ioan VOICU  
Member

Geneva, 26 May 1989

Jean HARDY  
Acting Executive Secretary