
ADMINISTRATIVE TRIBUNAL

Judgement No. 460

Case No. 371: SHATBY

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Jerome Ackerman, Vice-President, presiding;
Mr. Samar Sen; Mr. Ahmed Osman;

Whereas, on 26 October 1987, Michel Wilson Shatby, a former staff member of the United Nations Children's Fund, hereinafter referred to as UNICEF, filed an application that did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 1 January 1988, the Applicant, after making the necessary corrections, again filed an application in which he requested, under article 12 of the Statute of the Tribunal, a revision of Judgement No. 376 rendered in his case on 6 November 1986;

Whereas the pleas of the application read as follows:

"PRELIMINARY MEASURES:

In accordance with paragraph 3 of article 7 of the Rules of the Tribunal, the esteemed Tribunal is respectfully requested to order the following before proceeding to consider the Applicant's merits:

- (1) To designate a Water Supply Expert Engineer to examine and evaluate the technical work including the additional work, performed by the Applicant during his service with UNICEF.
- (2) To request the Respondent to provide the following:

- a. Documents of the project which the Applicant was recruited for.
- b. Terms of reference, plan of operations and project documents pertinent to the Bilateral Agreement of July 1978, signed between UNICEF and the Government of Yemen.
- c. Information about the donation by the Government of Yemen from the properties of the Ministry of Works to UNICEF, of a piece of land, on which it constructed its building.

PLEA NO. I: COMPENSATION FOR THE APPLICANT'S SPECIAL ASSIGNMENT OF 'WATER ADVISOR TO THE GOVERNMENT OF YEMEN':

(Non-observance of the Applicant's terms of appointment)

...

The esteemed Tribunal is respectfully requested to decide on:

- (1) Whether the Applicant's contractual assignment was Project Officer 'Management Engineer' for managing UNCDF [United Nations Capital Development Fund] Project No. YEM/76/C31, stage I.
- (2) Whether the factual Applicant's assignment was 'Water Advisor', to fulfil UNICEF's commitment in the Bilateral Agreement of July 1978. (In its Judgement, the esteemed Tribunal ruled that the Applicant's factual assignment was 'Water Advisor').
- (3) Claim of compensation of 50,000 US dollars which represents the balance of salaries and allowances between the two posts of Project Officer level L4, step 1 and 'Water Advisor' level L5, step 4, during the 49 months of the Applicant's service with UNICEF.
- (4) Claim of compensation of 30,000 US dollars which represents the accumulated interests for the above compensation during the past years from January 1979 up to November 1986.
- (5) Claim of compensation of 30,000 US dollars for the Applicant's sufferings and injuries sustained, due to discriminatory treatment of UNICEF and illegal documents of the Bilateral Agreement of July 1978.

PLEA NO. II: COMPENSATION FOR THE APPLICANT'S ADDITIONAL WORK:

- a. PROJECT NO. (1): Consultancy services for UNICEF Water Programme, Yemen.

...

b. PROJECT NO.(2): Implementing UNICEF Project
No. E/ICEF/P/L2034, as Project Manager.

...

The esteemed Tribunal is respectfully requested to decide on:

- (1) Whether the Applicant who was granted a Temporary Project Appointment for work on a certain project, is entitled to claim of compensation for additional performed work.
- (2) Claim of compensation of eight months' salary for project No.(1) and six months' salary for project No.(2).

PLEA NO.III: COMPENSATION FOR DELIBERATE AND PREMEDITATED
DEFAMATION TO THE APPLICANT'S NAME, REPUTATION,
PROFESSION AND CAREER:

...

The Counsel respectfully requests the esteemed Tribunal to decide on:

- (1) Whether the Applicant's draft is a personal property and should not be used outside UNICEF, without his knowledge and permission.
- (2) Whether Mr. Roberfroid when he indirectly transmitted the Applicant's draft to Director of USAID [United States Agency for International Development], misused his discretionary power in bad faith, violated Applicant's rights and violated UN regulation 1.5.
- (3) Whether Mr. Roberfroid when he accepted verbal allegation from the Director of USAID, despite of Applicant's denial, violated the Applicant's rights in evil intent and violated UN regulations 1.3, 1.9 and administrative instruction No. ST/AI/292 of 15 July 1982.
- (4) Whether Mr. Roberfroid when he held meetings with Officials of the Government and United Nations pronouncing the Applicant's involvement in serious charges, misused his discretionary power, violated the Applicant's rights in evil intent and violated UN regulations 1.4 and 1.5 and rule 101.6.
- (5) Whether the Applicant is innocent from the Respondent's five charges.
- (6) Rescinding the decision of termination of Applicant's services.
- (7) Compensation of 100,000 US dollars for the injury sustained from the deliberate and premeditated defamation to his name, reputation, profession and career.

PLEA NO.IV: COMPENSATION FOR ARBITRARY TERMINATION OF
APPLICANT'S SERVICE:

The Counsel respectfully requests the esteemed Tribunal to decide on:

- (1) Whether termination of Applicant's service was motivated by prejudice.
- (2) Rescinding the decision of termination.

OR

Compensation of 24 months' salary for the injury sustained.

- (3) Compensation of six months' salary for injury sustained because of unfair and unjust treatment of UNICEF Administration."

Whereas, on 29 January 1988, the Respondent requested the Tribunal, as a preliminary measure and before going into the merits:

"to order the Applicant to specifically identify the alleged newly discovered facts and to demonstrate, with supporting evidence, why these facts were unknown to the Applicant at the time of the original application, the circumstances and precise timing of their alleged discovery and why they should be considered to be decisive."

Whereas, on 20 March 1988, the Applicant filed his written observations on the Respondent's request for a preliminary measure;

Whereas, on 31 May 1988, the Executive Secretary of the Tribunal informed the Applicant that the Tribunal had decided to grant the Respondent's request for a preliminary measure and ordered the Applicant to:

"file a brief statement, in which [he] should specifically identify the newly discovered facts, demonstrate why these facts were unknown to [him] at the time [he] filed the original application, what were the circumstances and the precise timing of their alleged discovery and why those facts should be considered decisive pursuant to article 12 of the Statute of UNAT."

Whereas, on 10 July 1988, the Applicant filed the statement ordered by the Tribunal in which he amended his pleas as follows:

"PRELIMINARY MEASURES:

In accordance with paragraph 3 of article 7 of the Rules of the Tribunal, the esteemed Tribunal is respectfully requested

to order the following before proceeding to consider the application on merits:

- (1) to designate a Water Expert Engineer to examine and evaluate the technical work and additional work performed by the Applicant.
- (2) To request the Respondent to provide the following:
 - a. Documents of the project which the Applicant was recruited for.
 - b. Terms of reference and plan of operations regarding the Bilateral Agreement of July 1978, signed between UNICEF and the Government of Yemen.
 - c. Information about the donation by the Government from the properties of the Ministry of Works to UNICEF, of a piece of land, on which it constructed its building.

PLEA NO.I: APPLICANT'S SPECIAL ASSIGNMENT OF 'WATER ADVISOR TO THE GOVERNMENT OF YEMEN':
(Non-observance of his terms of appointment)

...

The esteemed Tribunal is respectfully requested to find that UNICEF hired the Applicant at a low price in order to provide him to the Ministry of Works as an expression of gratitude for the donation of its valuable piece of land.

UNICEF Also, the esteemed Tribunal is requested to find that: violated the United Nations' Regulations regarding the legal form of the Bilateral Agreement of July 1978, violated Staff Rules and Regulations of the 200-Series when the Applicant's status was changed from a Project Officer to a special assignment, misused its discretionary power in bad faith and violated Applicant's rights.

Consequently, the esteemed Tribunal is requested to take decision on:

- (i) Compensation for fifty thousand US dollars which represents the balance of remuneration between the post Project Officer L4, step 1 and Water Advisor L5, step 4, during the 49 months of his service.
- (ii) Compensation for thirty thousand US dollars which represents the accumulated interest for the above compensation during the past years from January 1979 up to November 1986.
- (iii) Compensation of thirty thousand US dollars for the Applicant's suffering and injury sustained due to illegal form of the Bilateral Agreement and the discriminatory treatment of UNICEF Administration.

PLEA NO.II: ADDITIONAL WORK:

(a) PROJECT No.(1): Consultancy Services for UNICEF Water Programme.

(b) PROJECT No.(2): Implementing Project No. E/ICEF/P/L2034.

...

The esteemed Tribunal is respectfully requested to find that the Applicant who was only granted a 'Temporary Project Appointment' has the right to claim remuneration for performing this additional work.

Consequently, the esteemed Tribunal is requested to take decision on:

(i) Compensation of eight months' salary for project No.(1) and six months' salary for project No.(2).

PLEA NO.III: DELIBERATE AND PREMEDITATED DEFAMATION TO APPLICANT'S NAME, REPUTATION, PROFESSION AND CAREER:

...

- The esteemed Tribunal is respectfully requested to find that:
- (1) Applicant's draft is personal property and should not be used, in any way, without his prior approval or permission.
 - (2) Applicant is innocent of the charges alleged by the Respondent in his statement of 26 March 1984.
 - (3) Termination of Applicant's services was motivated by prejudice.
 - (4) The Applicant has sustained serious injury and permanent harm since October 1980 onwards and up to the present time, when the Respondent violated UN regulations 1.3, 1.4, 1.5 and 1.9 and staff rule 101.6, misused his discretionary power, violated Applicant's rights and violated UN ... ST/AI/292 of 15 July 1982 and in bad faith.

Consequently, the esteemed Tribunal is respectfully requested to take decision on:

- (i) Compensation of one hundred thousand US dollars for the injury and permanent harm sustained from the deliberate and premeditated defamation to his name, reputation, profession and career.
- (ii) Rescinding the decision of termination of Applicant's services.

PLEA NO.IV: ARBITRARY TERMINATION OF APPLICANT'S SERVICES:

In the light of the newly discovered facts, the esteemed Tribunal is respectfully requested to find that: Applicant's

PER [performance evaluation report] might be discarded, all the statements in the non-renewal memo of 21 September 1982 are incorrect or inaccurate or irrelevant or prejudicial, and the Applicant has suffered from the unfair and unjust treatment of UNICEF.

Consequently, the esteemed Tribunal is requested to take decision on:

- (i) Termination of Applicant's services was motivated by prejudice.
- (ii) Rescinding the decision of termination OR compensation of 24 months' salary for the injury sustained.
- (iii) Compensation of six months' salary for injury sustained because of the unfair and unjust treatment of UNICEF Administration."

Whereas, on 14 September 1988, the Respondent filed his answer and requested the Tribunal to dismiss the application, since the new documents submitted by the Applicant were either, available to the Tribunal when it considered the original application and did not meet the requirements of article 12 of the Statute of the Tribunal which "specifies that the fact must have been 'unknown to the Tribunal and to the party claiming revision'," or, if not contained in the Applicant's personnel files, were irrelevant to the present application for revision.

Whereas, on 24 January 1989, the Applicant filed written observations;

Whereas, on 27 October 1989, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case were set out in Judgement No. 376.

The Tribunal, having deliberated from 26 October to 10 November 1989, now pronounces the following judgement:

I. The Applicant brought his case for the first time before the Tribunal in 1986. It was considered and decided upon by the Tribunal in its Judgement No. 376 rendered on 6 November 1986. He

now presents an application, requesting a revision of Judgement No. 376 under article 12 of the Tribunal's Statute.

II. The Tribunal recalls its Judgement No. 303, Panis, paragraph I, (1983) in which it stated:

"Applications for revision of a judgement delivered by the Tribunal must be considered in the light of the standards imposed by article 12 of the Tribunal's Statute. That article enables the Secretary-General or the Applicant to 'apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence ...'. ... The standards contained in article 12 are accordingly relatively strict and lay a substantial burden upon a party who requests revision."

III. The Applicant claims the discovery of new facts of such a nature as to be a decisive factor, and that these were not known to the Tribunal and to him when the judgement was rendered. According to the Applicant, these new facts appear in seven documents forming annexes 1, 2, 7, 10, 19, 21 and 23 to his application dated 1 January 1988 and confirmed in his second amended statement dated 10 July 1988. Therefore, the Tribunal will examine whether the basis for the present request for revision of Judgement No. 376 fulfills the requirements of article 12 of the Tribunal's Statute.

IV. The Tribunal notes first, that in his application for revision dated 10 July 1988, the Applicant introduces four pleas that are essentially the same as those already included in his first case, No. 371, and which had been dealt with and disposed of by Judgement No. 376.

V. In his first plea, submitting a claim for compensation for his special assignment as "Water Advisor to the Government of Yemen", the Applicant invoked as relevant newly discovered facts,

annexes No. 1, 2 and 7. The Tribunal notes with regard to annex No. 7, that it contains no new fact since the document was in the Applicant's personnel files which were before the Tribunal. With regard to annexes No. 1 and 2, the Tribunal notes that these two documents, one in 1976, and the other in 1977, refer to consideration by UNICEF for recruitment of a Water Management Engineer to a specific project. It appears that the Applicant, by invoking these two annexes, attempts to show that UNICEF was considering all along the recruitment of a Water Management Engineer. He thus seeks to reinforce his claim that the post he was initially recruited for and later appointed to, was indeed that of a Water Management Engineer for a particular project, and not of a Water Advisor to the Government of Yemen, the assignment he actually performed.

VI. In the Tribunal's view, and for the following reasons, the contents of these two annexes do not constitute new facts of a decisive nature unknown to the Tribunal and the Applicant.

Whatever was the prior intention of UNICEF in this respect, the fact remains that in UNICEF's advertisement in the newspaper "Al-Ahram" on 16 February 1978, what was explicitly mentioned was a request for a Water Management Engineer, and in describing the purpose of the job it was stated: "To assist in promoting and speeding up the implementation of Rural Water Supply Project". On this basis, the Applicant was then interviewed and appointed as a Project Officer, Water Management Engineer. This fact was known to the Applicant, and the Tribunal took note of it at the beginning of para. II of its Judgement No. 376.

VII. In his first plea, the Applicant, once again relying on a supposedly new fact, emphasized the confusion provoked by the assignment he performed which was that of a Water Advisor to the Government of Yemen and not a Project Officer. This also is not a new fact since the Tribunal was aware of and referred to it

explicitly in its Judgement No. 376, paragraph II. The Tribunal stated:

"Thus, the engineer who had been selected pursuant to a newspaper advertisement referring to assistance in the implementation of a rural water supply project was offered to, and accepted by, the Government of the Yemen Arab Republic as Administrative and Technical Assistant to the Rural Water Supply Department of its Ministry of Public Works. According to the newspaper advertisement, the post offered was tightly linked to a specific project or set of projects. According to what was offered to the Government of [the] Yemen Arab Republic by UNICEF and accepted by it, the post was of advisor to the Rural Water Supply Department of that country."

VIII. Moreover, with regard to his second plea concerning additional work, the Tribunal in its Judgement No. 376 recognized the difference in nature and magnitude of the two jobs. Thus, the Tribunal in paragraph III of Judgement No. 376 stated that the future tasks which had been entrusted to the Applicant are "something much broader and not altogether of the same nature as those set forth in the job description."

In paragraph IV of Judgement No. 376, the Tribunal elaborated on this point by stating:

"This difference is not one of degree but of substance. A difference merely in the type or the intensity of the work to be performed would not have led the Tribunal to take the present view. But the difference is much more profound and led to the placing of the Applicant in an ambiguous situation, prejudicial to him."

IX. In paragraphs V and VI of Judgement No. 376, the Tribunal recognized that this situation created difficulties for the Applicant's work and also had a bearing on the non-renewal of the Applicant's appointment, which issue the Applicant raises again in his plea No. IV of his request for revision.

X. In paragraph VII of Judgement No. 376, the Tribunal concluded "that the ambiguity that surrounded the conditions of the

Applicant's work had a considerable prejudicial impact, not only during his period of service, but also when the renewal of his contract was considered". The Tribunal, accordingly, held the Administration responsible. The Tribunal recognized that the Applicant was entitled to compensation and fixed the amount as three months net base salary. (Paragraph VIII of Judgement No. 376).

XI. In his first plea, the Applicant states that the Tribunal awarded only a small amount of compensation. The Tribunal does not see any reason to change the amount awarded to the Applicant.

XII. In his third plea, the Applicant reintroduced the issue of defamation which had been rejected by the Tribunal in its Judgement No. 376. The Applicant claims the discovery of new facts of a decisive nature in annexes 19 and 21. After examining these two documents, the Tribunal does not consider them to be of a decisive nature. Accordingly, they do not constitute valid grounds for revision of Judgement No. 376.

XIII. In conclusion, the Tribunal finds that the main purpose of the various pleas submitted by the Applicant in his request for revision of Judgement No. 376 is merely to reargue his case. The Tribunal concludes that the Applicant has failed to establish, within the meaning of article 12 of its Statute, the existence of any new fact of a decisive nature unknown to him and to the Tribunal when the judgement was rendered.

XIV. In view of the foregoing, the Tribunal declines the Applicant's requests for the appointment of an expert witness and for the production of documents.

XV. The application is rejected in its entirety.

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Samar SEN
Member

Ahmed OSMAN
Member

New York, 10 November 1989

R. Maria VICIEN-MILBURN
Executive Secretary