
ADMINISTRATIVE TRIBUNAL

Judgement No. 468

Case No. 481: BABA-MOUSSA

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. Ioan Voicu;

Whereas at the request of Mohamed Baba-Moussa, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 15 July 1988 the time-limit for the filing of an application to the Tribunal;

Whereas, on 25 April 1988, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, at the request of the Applicant, the President of the Tribunal with the agreement of the Respondent, successively extended until 14 October and 31 October 1988 the time-limit for the filing of an application to the Tribunal;

Whereas, the Applicant, after making the necessary corrections, again filed the application on 28 October 1988;

Whereas the pleas of the application read as follows:

"II. PLEAS

7. The Applicant respectfully requests the Administrative Tribunal:

a. To find and rule that the Respondent failed to make his assessment on the basis of the medical evidence submitted as a final appraisal of the Applicant's

medical condition;

- b.To find and rule that the medical condition of the Applicant was verified in the appropriate manner to be suitable for further employment;
- c.To find and rule that due process had not been observed in the procedural matters, and;
- d.Therefore order that as a result of the resultant lack of due process the Applicant be reinstated at a duty station."

Whereas the Respondent filed his answer on 23 February 1989;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Economic Commission for Africa (ECA) in Addis Ababa on 26 December 1984, as an Associate Human Settlements Officer and was initially offered a two year fixed-term appointment at the P-2 level. In a memorandum dated 29 April 1986, the Chief of his Division recommended that the Applicant's appointment be extended for a further fixed-term period of two years and on 12 May 1986, the Officer-in-Charge of the Personnel Section requested the Executive Secretary's concurrence to extend the Applicant's appointment, as recommended by his supervisor.

On 25 May 1986, the Applicant suffered a myocardial infarction and was hospitalized in Addis Ababa at the Dejazmach Balcha Hospital. He was subsequently evacuated by a special plane to Paris on 3 June 1986, for treatment under the care of Dr. J.C. Armand, at the international Hospital of the University of Paris where he remained until 8 July 1986. From there, he was sent to a specialized rehabilitation centre at Cambo-les-Bains in Southern France, under the supervision of Dr. J.P. Bertho. He completed his treatment at the Centre on 23 September 1986 and remained on sick leave, in France, under the care of a cardiologist. On 29 September 1986, Dr. Bertho, in Cambo-les-Bains, wrote to Dr. J.C. Armand in Paris:

"I am of the view that he can now be authorized to return to work (architect), which seems to me to be absolutely necessary. He may return to Addis Ababa, but it would naturally be much more sensible for him to work under normal conditions and not at high altitude." (Translation from French).

In a memorandum dated 13 October 1986, the Officer-in-Charge of the ECA Clinic, informed the Chief, Personnel Section, ECA, that in reviewing the Applicant's medical reports, he had noted that the Applicant's physician doubted his ability to work again in Addis Ababa at such high altitude. The medical reports were then transmitted to the U.N. Medical Director at Headquarters for advice.

In a memorandum dated 22 October 1986, the U.N. Medical Director wrote to the Director of Personnel Administration, Office of Personnel Services (OPS), as follows:

"I have recently received a report from [the Applicant's] cardiologist in France, who correctly raises the question as to the advisability of Mr. Baba-Moussa living again at an altitude equivalent to Addis Ababa. Personally, I would also advise against Mr. Baba-Moussa returning, for any appreciable period of time, to ECA Headquarters.

Because of his recent cardiac problem, Mr. Baba-Moussa's medical classification is 2A: thus, I would advise against an extension of his present contract when this expires at the end of this year."

In light of the advice from the U.N. Medical Director, the Chief, Personnel Section, ECA, informed the Applicant on 19 November 1986, that the Medical Director at Headquarters had just informed them that since his medical classification was "unfortunately '2A'" it would not be possible to extend his contract.

On 24 November 1986, after completing his rehabilitation in France, the Applicant's cardiologist in Toulouse informed Dr. Armand in Paris that: "In view of his condition, he [the Applicant] should be able to resume his duties without any difficulty." Dr. Armand examined the Applicant in Paris and, on 11 December 1986, issued a

cardiological assessment report in which he stated: "Mr. Baba-Moussa may now resume normal physical activity, as well as his normal duties (at Addis Ababa)."

The Applicant returned to Addis Ababa and reported for duty on 15 December 1986.

On 22 December 1986, the Applicant requested the Secretary-General to review the administrative decision not to renew his appointment. On the same date, he wrote to the U.N. Medical Director, requesting review of his medical classification.

On 24 December 1986, the Division of Personnel Administration, OPS, advised ECA that the Applicant's contract could not be extended for medical reasons, as such extension required medical clearance, which in his case had not been given.

The Applicant's appointment expired on 25 December 1986.

In a cable dated 6 January 1987, the U.N. Medical Director informed the Applicant that medical classification 2A was applied automatically following the United Nations guidelines whenever anyone had a myocardial infarction. In addition, he considered the Applicant's infarction serious, because he had required six months of sick leave to recover, while the average recovery for such problem usually took less time. He also stated that it was most unwise for anyone with a fairly recent infarction to be living at the altitude of Addis Ababa with its inadequate medical services. He medically advised the Applicant to move to a lower altitude as soon as possible.

On 14 February 1987, the Assistant Secretary-General for Personnel Services, informed the Applicant that fixed-term contracts carried no expectancy of renewal or of conversion to any other type of appointment and that the U.N. Medical Director had confirmed his classification. Since the U.N. Medical Director's decision had been taken in accordance with his authority under staff regulation 4.6 and personnel directive PD/2/80/Rev.1, he could find no reason to reverse it.

On 20 February 1987, the Applicant lodged an appeal with the

Joint Appeals Board (JAB). The Board adopted its report on 9 December 1987. Its findings and recommendation read as follows:

"Findings and recommendation

36. The Panel unanimously

Found that the relevant provisions of the Staff Regulations and Rules, of the 'Guide to Medical Fitness Standards for Application by the International Organizations in the United Nations Family when Awarding Regular Contracts' and of personnel directive PD/2/80/Rev.1 entitled: 'Medical Standards and Clearances' were scrupulously applied;

Found that no expectancy had been created regarding the renewal of the appellant's fixed-term appointment or its conversion to any other type of appointment in the Secretariat of the United Nations;

For the above reasons, made no recommendation in support of the appeal."

On 11 January 1988, the Assistant Secretary-General for Human Resources Management¹ informed the Applicant that the Secretary-General had taken note of the Board's report and had decided to maintain the contested decision.

On 28 October 1988, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was deprived of due process.
2. The U.N. Medical Director's determination regarding the Applicant's fitness to work was based on the advice of Dr. Bertho, the Applicant's "rehabilitation physician", and not on advice from the principal cardiologist, Dr. Armand.
3. The U.N. Medical Director did not comply with all the requirements of PD/2/80/Rev.1 and went beyond his mandate when he advised the Administration not to extend the Applicant's

¹ Successor of OPS.

appointment.

Whereas the Respondent's principal contentions are:

1. If a healthy and efficient staff member has no expectancy of renewal of his fixed-term appointment, a staff member who has been seriously sick can have no greater rights.

2. As the Applicant cannot claim any vested rights to employment, he therefore cannot challenge the accuracy of the findings of the U.N. Medical Director.

3. The motivation of the discretionary decision by the Secretary-General not to renew the Applicant's contract cannot be challenged on its substance.

4. The U.N. Medical Director correctly applied the standards for the renewal of appointments.

The Tribunal, having deliberated from 25 October to 16 November 1989, now pronounces the following judgement:

I. Essentially, the Applicant questions the medical assessment of his condition made by the United Nations Medical Director. He contends that if the assessment were correctly made, he would be entitled to have an extension of his two year fixed-term contract that expired on 25 December 1986. The Applicant's duty station was Addis Ababa (Ethiopia), a city situated at a height of over 8,000 feet.

II. The Joint Appeals Board (JAB) examined at length the case presented by the Applicant and rejected it entirely. Before the Tribunal, the Applicant has presented basically the same facts as were examined by the JAB. The Tribunal cannot entertain the plea that the Applicant had any right to extension of his fixed-term contract. Not only the wording of this type of contract, but the circumstances surrounding his separation at the end of December

1986, convince the Tribunal that the Applicant could have no legal expectancy of prolongation of his contract.

III. In April 1986 - about eight months before his contract was to expire - the Chief of his Division in the Economic Commission for Africa (ECA) recommended his extension by two years. Unfortunately, the Applicant suffered a myocardial infarction before the recommended extension was acted upon by the Executive Secretary of ECA. He was initially treated for this in Ethiopia and then was under treatment and observation by different doctors in France. After rehabilitation and two months sick leave in France he returned to Addis Ababa on 15 December 1986; ten days later, his contract expired and he was separated.

IV. During this period preceding his separation, there was some difference of opinion about the medical condition of the Applicant.

The doctors in France seemed to be of the opinion that the Applicant could resume his normal work, while the ECA doctor and the U.N. Medical Director took the view that the Applicant's condition was such that he was not eligible for another contract. The Applicant was informed of the U.N. Medical Director's belief that it would be "most unwise for anyone with fairly recent infarction to be living at altitude of Addis Ababa with its inadequate medical services and medically I advise you to move (to) lower altitude soonest".

V. On further examination of all the reports from the doctors in France, the U.N. Medical Director confirmed his opinion that the Applicant's condition warranted a classification at 2A and opposed his extension. All these measures were taken by the Medical Director strictly in accordance with the U.N.'s "Guide to Medical Fitness Standards", and personnel directive PD/2/80/Rev.1, dated 28 September 1984, dealing with "Medical Standards and Clearances".

The latter says in paragraph 9(b), that persons with classification

2A require medical clearance for "extension, change of duty station or conversion to probationary". The Guide classifies "myocardial infarction" as 2A, which means that a person so classified may not receive a medical clearance for a contract of employment or a renewal before more than one year of treatment has elapsed without any significant symptoms of recurrent coronary problems. In that case, the person would be reclassified as 1B, and would be considered "fit for sedentary employment at low altitude". Since the one year treatment period had not elapsed before the Applicant's contract expired, no medical clearance for a renewal could have been forthcoming for him.

VI. The Tribunal has always held that it is not empowered to substitute its opinion for that of the competent medical authorities and can, at most, only examine whether the correct procedure was followed in obtaining and applying that opinion (Judgement No. 107, Miss B (1967)). In this particular case, the Tribunal concludes that it has been strictly followed and finds no merit, even if it were relevant, in the Applicant's observation that the U.N. rules and guidance on these matters may have become otiose and need revision. The Tribunal must observe the rules and regulations as they are and leave it to the Administration to decide if any revision is called for.

VII. The Tribunal notes that all financial entitlements of the Applicant for fairly prolonged treatment, rehabilitation and sick leave were met by the Respondent, and expects that should the Applicant, after necessary recovery, apply for such appointment as may become available, he would be fairly considered, provided, of course, he met all the criteria, including medical clearance.

VIII. For the foregoing reasons, the Tribunal cannot entertain any of the pleas advanced by the Applicant and rejects them in their entirety. The Tribunal orders that a copy of this judgement be

incorporated in the Applicant's personnel files.

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Samar SEN
Member

Ioan VOICU
Member

New York, 16 November 1989

R. Maria VICIEN-MILBURN
Executive Secretary