

---

ADMINISTRATIVE TRIBUNAL

Judgement No. 471

Case No. 501: BYFIELD

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Jerome Ackerman,  
First Vice-President; Mr. Ahmed Osman, Second Vice-President;

Whereas, on 21 November 1988, Keith Henderson Byfield, a  
former staff member of the United Nations, filed an application that  
did not fulfil all the formal requirements of article 7 of the Rules  
of the Tribunal;

Whereas, on 10 February 1989, the Applicant after making the  
necessary corrections, again filed an application, the pleas of  
which read in part as follows:

"PLEAS

1)...

2)... the Appellant is requesting the Tribunal to order Respondent  
to pay monetary compensation as retroactive (back-pay)  
from June 1, 1985 to the date of settlement, of  
Appellant's salary, health insurance pension, life  
insurance, dental insurance, uniforms, education grants,  
family visit travels vacation and all other benefits due  
to the Appellant and Appellant's family.

3)... The Appellant is requesting the Tribunal to order the  
Respondent to pay monetary compensation to Appellant for  
its medical negligence, and suffering he caused on  
Appellant.

- 4)... Appellant is therefore requesting the Tribunal to award Appellant monetary compensation Re: The Violation of his rights to due process of the law in UN appeal procedures.
- 5)... The Appellant is requesting the Tribunal to order Respondent to pay monetary compensation to the Appellant for the mental anguish he has caused on the Appellant.
- 6)... The Appellant is therefore requesting the Tribunal to order Respondent to pay monetary compensation for disruption in Appellant's matrimonial home, separation of his wife is caused by his, Respondent's actions.
- 7)... Appellant therefore requests the Tribunal to award monetary compensation to Appellant for knowingly defaming Appellant's character.
- 8)... The Appellant is therefore requesting the Tribunal to order Respondent to pay monetary compensation to Appellant for his loss in job opportunities, and employment.
- 9)... The Appellant therefore requests the Tribunal to order the Respondent to pay monetary compensation for the material, physical, and mental anguish that Respondent has caused on his, Appellant's family.
- 10)... Appellant is therefore requesting the Tribunal to order Respondent to pay monetary compensation to Appellant for the aggravation 'that includes a loss of confidence with exposure to ridicule'.
- 11)... The Appellant requests the Tribunal to order the Respondent to pay monetary compensation of twenty million dollars in respect to material-mental and physical damage to Appellant and Appellant's family on the above subject matters of:
  - A. Medical Malpractice (Negligence).
  - B. Rights violated to due process of the law in UN appeal procedures with procedural errors.
  - C. Mental Anguish.
  - D. Disruption in Appellant's matrimonial home.
  - E. Defamation of Appellant's character.
  - F. Material and Physical damage to Appellant's employment and job opportunities.
  - G. Material, Physical and Mental anguish on Appellant's wife and family.
  - H. Aggravation that includes 'a' loss of confidence with exposure to ridicule.

I.Discrimination."

Whereas the Respondent filed his answer on 4 April 1989;  
Whereas the Applicant filed written observations on 15 May 1989;

Whereas, on 22 March 1990, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 3 August and 15 October 1989, and on 18 and 29 March 1990, the Applicant submitted additional statements;

Whereas, on 23 April 1990, the Applicant submitted a statement from his wife;

Whereas the facts in the case are as follows:

Keith Byfield was recruited by the United Nations on 1 May 1982, as a Field Service Security Officer at the FS-2, step I level. He was initially offered a one year fixed-term appointment and was assigned to the United Nations Truce Supervision Organization for Palestine (UNTSO), in Jerusalem. He served on a succession of fixed-term appointments until 30 September 1984, when his appointment was extended for three months, pending routine medical clearance, pursuant to staff regulation 4.6.

In May 1984, the Applicant was examined by Dr. Avramov, the local U.N. physician in Israel, who concluded that the Applicant suffered from mitral stenosis, a cardiac problem. He therefore referred him to a cardiologist, Dr. Bishara, who after examining the Applicant on 8 May 1984, concluded, contrary to Dr. Avramov, that the Applicant's health was normal.

The Applicant was subsequently examined twice, in July and on 30 November 1984, by Dr. Avramov, who notwithstanding Dr. Bishara's report, reiterated his initial diagnosis, that the Applicant suffered from mitral stenosis. Dr. Avramov transmitted his medical assessment of the Applicant to Dr. Irwin, the U.N. Medical Director at Headquarters, apparently without forwarding and without

mentioning Dr. Bishara's evaluation of the Applicant's health.

In December 1984, the Applicant, who was on family visit travel to Jamaica and the United States, was examined by his family physician, Dr. Pahwroo, as well as by Dr. Erenrich, a physician in the United States. Both doctors concluded that the Applicant was in perfect health.

On 3 January 1985, the U.N. Medical Director informed the Administration of his conclusion that the Applicant was "not medically fit for an extension of his present contract". On his return to Israel from Jamaica, the Applicant, who had been advised of the U.N. Medical Director's conclusion, was examined at Headquarters on 23 January 1985, by the U.N. Medical Director himself and by the U.N. consultant cardiologist, who confirmed that "clinically ... [the Applicant] had mitral stenosis". On this basis the U.N. Medical Director classified the Applicant, in accordance with personnel directive PD/2/80/Rev.1, as 2A i.e. only eligible for employment after a "correctible medical impairment" were corrected or not eligible yet for employment on account of a "serious medical problem". He reiterated his conclusion that the Applicant could not be medically cleared for an extension of his fixed-term appointment.

The Applicant returned to Jerusalem and was examined once again on 31 January 1985, by Dr. Avramov, who referred him to a specialist in cardiology, Professor Stern. In a report dated 3 January 1985(sic), Professor Stern stated that after performing an echocardiogram, a specialized test, he had verified that the Applicant's heart valves were normal and that he "should not be limited at all in his physical activities". Dr. Avramov subsequently wrote a medical certificate dated 20 February 1985, in which he concluded, in accordance with Professor Stern, that the Applicant was in good health.

The Applicant's appointment was however extended for two successive fixed-term periods of two months and three months until 31 May 1985, in order to enable him to arrange his personal affairs and his repatriation travel.

Prior to his separation from service, on 6 March 1985, the Applicant requested the Secretary-General to review the decision not to renew his fixed-term appointment, arguing essentially that the failure to clear him for further employment resulted from a medical error. His letter was treated as a request for administrative review pursuant to staff rule 111.2(a). Not having received a reply from the Secretary-General within the time-limits prescribed in the Staff Rules, on 14 June 1985, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

The Applicant's statement of appeal was forwarded to the U.N. Medical Director for comments. In a memorandum dated 1 August 1985, the U.N. Medical Director informed the Director, Office for Field Operational and External Support Activities (OFOESA), that having reviewed the Applicant's statement of appeal and new medical information attached to the appeal, he was obliged to reverse his decision concerning the Applicant's medical classification. Among the various documents forwarded with the appeal, was the report dated 3 January 1985(sic), from Professor Stern to Dr. Avramov, in which Professor Stern stated "that while clinically, there [were] indications of a heart valve problem, a specialized test known as an echocardiogram was made on 1 February 1985, and this shows that the heart valves are normal". The U.N. Medical Director concluded that "if [he] had seen Professor Stern's 3 February report earlier, then the whole course of events regarding Mr. Byfield would have been different ...". Accordingly, he was "prepared to medically reclassify [the Applicant] to 1A", i.e. "fit for general employment". He stated his hope that the Applicant could "be re-instated as a Field Service Officer as soon as possible", and that "some way could be found to reimburse [the Applicant] for any financial burdens he has borne in leaving U.N. service and in being re-instated".

In a cable dated 9 August 1985, the Director, OFOESA, informed the Applicant of the U.N. Medical Director's recommendation and of the terms of an offer by the Administration to reinstate him,

effective 1 June 1985, subject to the withdrawal of his appeal and to his returning to the Organization all monies received in connection with his separation from service, including his repatriation grant and the lump sum corresponding to commutation of the balance of his annual leave. The period running from 1 June 1985 until the date before he would resume his functions would be treated as special leave with pay.

An exchange of correspondence ensued between the Applicant and the Administration concerning the offer of reinstatement and its modalities. The Applicant argued that he should not be obliged to repay his repatriation grant and the sum corresponding to his annual leave commutation since his appointment had been terminated by the Administration's fault.

In the meantime, OFOESA, the U.N. Traffic Unit and the Internal Audit Division (IAD) were jointly investigating the Applicant's claim for destination charges and other expenses relating to the shipment of personal effects after his separation from the service of the U.N.

In a cable dated 26 September 1985, the Director, OFOESA, informed the Applicant that all the issues he had raised in correspondence related to the offer of settlement concerning his separation and reinstatement were being reviewed and that his travel should consequently be held in abeyance pending further instructions from the U.N. In a letter dated 23 October 1985, the Applicant complained about the delays by the U.N. concerning the conditions of his re-employment, delays which had an effect on his search for employment and which resulted in financial and mental depression for his family. He therefore requested full compensation and damages. On 30 October 1985, the Applicant's wife wrote to OFOESA, threatening legal action against the Organization.

The investigation conducted by IAD during the next several months was concluded in February 1986. In a report dated 12 February 1986, the Director, IAD, informed the Director, Division of Personnel Administration, of his conclusions. On 5 March 1986,

the Applicant was asked to comment on the report. On 10 March 1986, the Applicant wrote to the Personnel Officer, setting forth his views on the report, but on 17 April 1986, the Director, IAD, concluded that the Applicant had not been able to clear discrepancies in the investigation. Accordingly, on 23 April 1986, the Personnel Officer informed the Applicant that since the explanations provided by him in respect of his shipment claim were not found fully satisfactory, the U.N. was no longer considering his re-employment.

On 27 April 1987, the Applicant asked for submission of his appeal directly to the Tribunal but on 19 May 1987, the Assistant Secretary- General for Human Resources and Management rejected his request. The Board adopted its report on 6 September 1988. Its findings and recommendations read as follows:

"Findings and Recommendations

82. The Panel unanimously,

- (a) Finds that while a regrettable error was committed in the medical classification of the appellant, his medical record was properly corrected;
- (b) Finds that the Secretary-General attempted in good faith to correct this error by offering to continue the appellant in his employment and that he was within his right when he withdrew the offer since the appellant had not accepted the offer;
- (c) Finds that the erroneous medical classification of the appellant could not be considered as resulting from medical malpractice;
- (d) Finds that the appellant has produced no evidence that his separation from service was discriminatory;
- (e) Finds that the Secretary-General had no obligation, under staff rule 111.2(a) to enter into negotiations with the appellant to settle the appeal.

83. The Panel unanimously considers that the finding in paragraph 82(a) above is sufficient to grant the appellant the redress

he requested in respect to his erroneous medical classification.

84. The Panel unanimously concluded that in submitting an unsubstantiated claim for reimbursement of the cost of his shipment the appellant had not met the high standard of integrity expected of a staff member, as provided for in the Charter.
85. The Panel unanimously decides to make no recommendation in support of the appeal."

On 8 September 1988, the Officer-in-Charge for the Department of Administration and Management informed the Applicant that the Secretary-General, having re-examined the case in the light of the Board's report had decided to maintain the contested decision and to take no further action on his case.

On 10 February 1989, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant and his family were injured because of medical malpractice by the Respondent.
2. The Applicant and his family suffered mental anguish because of defamation of the Applicant's character by the Respondent.
3. The conduct by the Respondent caused material and physical damage to the Applicant's job opportunities.
4. The Respondent violated the Applicant's rights to due process of law.
5. The Applicant did not appeal to the JAB the administrative decision dated 23 April 1986, and therefore the JAB had no basis for considering any issues arising out of that decision.

Whereas the Respondent's principal contentions are:

1. Fixed-term appointments carry no expectancy of renewal or conversion to any other type of appointment.



2. One of the paramount considerations in the appointment of staff is to ensure that they meet the highest standards of integrity.

3. Neither the initial decision not to offer the Applicant a new fixed-term appointment, nor the decision to withdraw the offer of re-employment, was discriminatory.

4. No compensation is due to the Applicant.

5. Consideration of the Applicant's claims not raised in the JAB proceedings is not within the competence of the Tribunal in view of paragraph 1 of article 7 of its Statute.

The Tribunal, having deliberated from 24 April to 11 May 1990, now pronounces the following judgement:

I. The Applicant served the Organization since 1 May 1982 as a Security Officer in the Field Service category. He was assigned to UNTSO and was granted a succession of fixed-term appointments until 31 May 1985, the expiration date of his contract.

II. The Applicant appeals against the administrative decision conveyed to him on 14 January 1985, that he could not be medically cleared for an extension of his fixed-term appointment. He claimed that he was wrongly separated.

III. The Tribunal will examine whether the decision by the Secretary-General not to renew the Applicant's fixed-term appointment on medical grounds, has violated the Applicant's rights. In order to do so, the Tribunal will ascertain whether the provisions on medical classification and medical clearance were properly applied in his case.

IV. Under staff regulation 4.6: "The Secretary-General shall establish appropriate medical standards which staff members shall be required to meet before appointment". In PD/2/80/Rev.1 of 28

September 1984, these standards are spelled out. Paragraph 7 of that directive sets out the procedures for medical clearance after initial appointment, inter alia, for extension of appointment. According to these provisions, when the Applicant was recruited, he was found medically fit and his classification was 1A. Later on he underwent another medical examination and once again his medical classification was 1A.

V. The Tribunal notes that the next medical examination for the purpose of clearing the Applicant medically for the extension of his appointment was vitiated by errors which led to the non-extension of his appointment. The examination in question was conducted on the occasion of the extension of his fixed-term appointment effective 1 October 1984, which was renewed for three months pending medical clearance.

VI. The errors started with the diagnosis made by the first United Nations examining physician, Dr. Avramov, at the Applicant's duty station. Dr. Avramov stated in the periodic medical examinations made on 27 July and 30 November 1984, that the Applicant had a defect in his heart and a hernia. Both diagnoses by Dr. Avramov later proved to be incorrect. Moreover, according to the Applicant, Dr. Avramov examined him on 2 May 1984. Having diagnosed mitral stenosis, he referred the Applicant to a specialist in cardiology, Dr. Bishara, on 8 May 1984, for further medical examination and consultation. Dr. Bishara, after examining the Applicant, gave him a clean bill of health certificate. The Applicant forwarded the certificate to Dr. Avramov.

VII. The Tribunal considers in this respect that Dr. Avramov, as a generalist, should either have accepted the cardiologist's verdict, or at least have referred Dr. Bishara's report to the U.N. Medical Director in New York, together with the results of his own medical examination of the Applicant on 27 July and 30 November 1984.

Unfortunately, he appears to have done neither.

VIII. On 3 January 1985, the U.N. Medical Director, relying on the above-mentioned reports forwarded to him by Dr. Avramov, decided that the Applicant should be medically classified as 2A, and therefore not medically fit for an extension of his present contract.

IX. On 23 January 1985, the Applicant was examined by the U.N. Medical Director in New York. While he cleared him of the hernia, he upheld the original erroneous diagnosis concerning the Applicant's heart defect. On 24 January 1985, the U.N. Medical Director informed the Administrative Officer, OFOESA, of the following:

"Further to my 3 January memorandum the [Appellant] was examined by myself and our cardiologist in the Medical Service on 23 January. His medical classification has to remain, unfortunately as 2A, but I will be quite willing on compassionate grounds to medically clear him for an extension of another three months, for him to settle his personal affairs."

X. The Applicant made strenuous efforts to rebut his 2A medical classification by invoking three medical examinations in his favour. The first, by Dr. Bishara, mentioned above, on 8 May 1984; the second, by his personal family physician who examined him on 31 December 1984, and the third, by a cardiologist from the Cardiology Assembly of Palm Beach, Florida, who examined him on 21 January 1985. The efforts of the Applicant to prove that his heart was healthy were of no avail and they failed to alert the Medical Service in New York that there might be something wrong with the original diagnosis of the first United Nations examining physician at the Applicant's duty station, as well as subsequent diagnoses to the same effect.

XI. It was only after his appeal to the JAB that on 1 August

1985, the U.N. Medical Director expressed both his readiness to reclassify the Applicant medically as 1A and his hope that he could be reinstated as a Field Service Officer as soon as possible. The U.N. Medical Director reversed his earlier recommendation after seeing in the appeal file a report from an Israeli cardiologist, Professor Stern, which he had not seen before, indicating that the heart valves were normal. Professor Stern had examined the Applicant upon the referral of Dr. Avramov, after the Applicant had been examined in New York by the U.N. Medical Director on 23 January 1985.

XII. Medical clearance for further employment in the U.N. having been re-established, the question arises whether the Organization is legally bound to renew the Applicant's fixed-term appointment.

In his statement before the JAB, the Respondent answered this question in the negative. He expressed his opinion as follows:

"However, even had the appellant been given the highest medical classification of '1A', the Organization was under no obligation to renew his appointment and he had no right, contractually or under the Staff Rules, to employment beyond the expiry of his last appointment."

XIII. The Tribunal observes first, that under the provisions of staff rules 104.12(b) and 109.7(a) and in all the Applicant's letters of appointment, it is stated that fixed-term appointments do not carry any expectation of renewal nor of conversion to any other type of appointment and expire automatically and without prior notice on the expiration date specified in the letter of appointment. According to staff rule 109.7(b), separation as a result of the expiration of any such appointment shall not be regarded as a termination within the meaning of the Staff Regulations and Rules. Consequently, according to these provisions, the holder of a fixed-term appointment has no right, as a rule, to extension or further employment.

XIV. The Tribunal, in its Judgement No. 142, Bhattacharyya (1971) and in subsequent decisions, has held that expectancy of future employment by holders of fixed-term appointments is not necessarily to be decided by the wording of Staff Regulations and Rules and letters of appointment, but may take into account the totality of circumstances existing at the time of the staff member's separation from service.

XV. In reviewing the circumstances of this case, the Tribunal finds that the Secretary-General duly fulfilled the Applicant's expectation of renewal of his appointment by offering in good faith to reinstate him, following the new recommendation of the U.N. Medical Director clearing the Applicant for further employment. The Tribunal observes that the offer was reasonable and conditional on the Applicant accepting its terms. The Applicant did not agree with the offer and made counter-offers of his own. The Secretary-General had no obligation to accept the counter-offers. The end result was that the offer did not materialize in a meeting of the minds of the two parties, and the Applicant's expectancy of continued employment ended.

XVI. However, the Tribunal finds that the failure by the Administration to exercise due diligence in the handling of the Applicant's medical evaluation entails the legal responsibility of the Organization. The Tribunal considers that under the circumstances of this case, the Applicant should be awarded monetary compensation for the direct material and moral injury to which he was subjected. The Tribunal fixes the amount of compensation at six months net base salary.

XVII. The Applicant submits a claim for compensation for medical malpractice by the doctors involved. The Tribunal finds that the compensation awarded in the preceding paragraph is adequate relief for the errors in connection with the Applicant's medical

classification. The Tribunal does not find, on the facts of this case, any medical malpractice.

XVIII. The Applicant also claims compensation because his separation on medical grounds was discriminatory. After reviewing all the information before it, the Tribunal does not find any evidence that the contested decision was vitiated by discrimination or motivated by prejudice or any extraneous factor. On the contrary, the available evidence shows that the Respondent extended the Applicant's contract on compassionate grounds until 31 May 1985, to settle his personal affairs and the Respondent made a reasonable offer in good faith to reinstate the Applicant on full pay as of 1 June 1985.

XIX. The Applicant complains that the Respondent introduced into his appeal before the JAB new and unrelated facts, contrary to staff rule 111.2(h). The Tribunal notes indeed that, during the proceedings before the JAB, new issues were raised by the Respondent, which the Applicant asserted he had not appealed to the JAB, and the JAB exercised jurisdiction over them.

These issues involve:

(a) A dispute over the settlement of some pending entitlements due to the Applicant upon separation, consisting of an insurance claim and destination charges in respect of his unaccompanied shipment; and

(b) An administrative decision conveyed to the Applicant on 23 April 1986, stating that he was no longer being considered for re-employment in the United Nations.

XX. These new issues had not been raised, either in the Applicant's original letter to the Secretary-General of 6 March 1985, or in his letter dated 14 June 1985, by which he instituted the proceedings before the JAB.

XXI. The Tribunal recalls Judgement No. 459, Moore-Woodroffe (1989), paragraph XIII, in which it stated:

"The Tribunal recalls its disapproval of attempts to raise new issues which have not been properly put before the JAB by an applicant. See Judgement No. 446, San José (1989) and No. 449, Janitschek (1989)."

XXII. The Tribunal therefore finds these new issues to have been beyond the scope of the jurisdiction of the JAB as constituted to consider the Applicant's appeal. And since the Secretary-General and the Applicant did not enter into an agreement to submit these new issues directly to the Tribunal in accordance with paragraph 1 of article 7 of the Tribunal's Statute, they are not receivable and the Tribunal cannot enter into their merits.

XXIII. For the foregoing reasons, the Tribunal:

1. Orders the Respondent:

(a) To pay to the Applicant a sum equal to six months net base salary as compensation;

(b) To correct the Applicant's medical record, if this has not yet been done, to show that as of 9 August 1985, the Applicant was medically fit for United Nations employment.

2. Rejects all other pleas of the Applicant.

(Signatures)

Roger PINTO  
President

Jerome ACKERMAN  
First Vice-President

Ahmed OSMAN  
Second Vice-President

Geneva, 11 May 1990

R. Maria VICIEN-MILBURN  
Executive Secretary