
ADMINISTRATIVE TRIBUNAL

Judgement No. 472

Case No. 494: BEYELE

Against: The Secretary-General
of the United Nations

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

Whereas, at the request of François Tewane Beyele, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 16 January 1989, the time-limit for the filing of an application to the Tribunal;

Whereas, on 12 January 1989, the Applicant filed an application, the pleas of which read as follows:

"II. PLEAS

The Applicant requests the Tribunal:

1. To rescind the decision of the Secretary-General of 13 July 1988 (...) which was based on the recommendations of the Joint Appeals Board dated 8 July 1988 (...) on an appeal of the Applicant who was requesting that the special post allowance which was granted to him be paid at the P-5 level in accordance with staff rule 103.11(d) (...).
2. To decide that the level of the special post allowance which had been granted to the Applicant should be paid at the P-5 level, in accordance with the staff rule 103.11(d).
3. To order:
 - (a) That the United Nations shall pay to the Applicant the amount corresponding to the difference, for the period from 6 January 1985 to 14 May 1986, between the salary he received

and the salary he would have received if he had been paid at the P-5, step I level (corresponding to a special post allowance at the P-5 level);

(b) That the payment be done at latest the last day of the full month following the date of the communication of the Tribunal to the Applicant;

(c) That, if he does not follow the decision of the Tribunal concerning the modality of payment, the Respondent will pay an interest on the totality of the amount due equal to the prime rate existing in New York at the date of the payment, as published in the WALL STREET JOURNAL, with the addition of one point."

Whereas the Respondent filed his answer on 17 March 1989;

Whereas the Applicant filed written observations on 12 April 1989;

Whereas the Applicant submitted further observations on 27 March 1990;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 July 1975. He was initially offered a two year fixed-term appointment as an Associate Economic Affairs Officer at the P-2, step IV level, in the Economic Commission for Africa (ECA) in Addis Ababa. He was assigned to the Joint ECA/FAO (Food and Agriculture Organization) Agriculture Division (JEFAD). The Applicant's appointment was extended for a further fixed-term period of two years and he was promoted to the P-3 level on 1 April 1978. On 3 July 1979, he was offered a probationary appointment and on 1 April 1980, a permanent appointment.

In a memorandum dated 14 May 1985, the Director, JEFAD, requested the Chief, Personnel Section, ECA, to pay the Applicant a Special Post Allowance (SPA) to the P-5 level, under staff rule 103.11. He confirmed that the Executive Secretary had officially assigned the Applicant as Officer-in-Charge of the Agricultural Marketing Section (AMS) from 19 October 1984. He noted that, even though the previous Chief of Section had served at the P-4 level,

the post should be classified at the P-5 level. In a reply dated 7 November 1985, the Chief, Personnel Section, ECA, rejected his request on the ground that the post encumbered by the Applicant was funded by FAO and consequently, ECA was not in a position to request FAO "to finance this allowance for an ECA staff member".

In August 1985, ECA submitted the Applicant's job description to the Headquarters Classification Section of the Office of Personnel Services (OPS) for classification review. In a Classification Notice dated 26 August 1985, approved by the Assistant Secretary-General, OPS, the classification of the post was confirmed at the P-3 level. The note stated: "No further analysis is required for this post unless there is a change in assigned responsibilities and duties". In a memorandum dated 4 December 1985, the Applicant, supported by his Director, challenged that decision, pointing out that the duties he was actually performing as Chief of Section had drastically changed in the past two years. He stated: "I believe P-4 [level] is the minimum in order to correct my administrative position".

In a memorandum dated 25 February 1986, an Officer at the Classification Section, OPS, informed the Applicant that, in classifying his post, no credit had been given to elements in the job description pertaining to activities of Officer-in-Charge, because they had been considered as "temporary and therefore not part of the job under evaluation". However, since they now understood that the job description reflected the duties of the post of Chief, AMS, he advised the Applicant to re-submit the job description of this post for classification review.

On 7 May 1986, ECA submitted to the Classification Section, OPS, a new request for classification of the Applicant's post. In a cable dated 6 June 1986, an officer at the Classification Section asked the Officer-in-Charge, Personnel Section, ECA, to clarify certain matters relating to the functions of Chief of Section and the funding of the post.

In a reply dated 8 July 1986, the Director, JEFAD, noted that

the difficulties surrounding payment of an SPA to the Applicant appeared to result from the non-observance of a Memorandum of Understanding signed in 1959 and amended in 1977 and 1981 between ECA and FAO concerning staff of JEFAD. He noted that according to article 2 of that Memorandum of Understanding, only the Director of JEFAD, was required to be an FAO staff member; all other staff were appointed by both Organizations, each of the Organizations being "responsible for salaries and other allowances of its staff". Since the Applicant was an ECA staff member, ECA was responsible for payment of his SPA, just as FAO was responsible for payment of allowances for staff appointed by the Director general.

In the meantime, on 14 May 1986, the Applicant was dismissed for misconduct.

In a letter dated 5 September 1986, the Applicant asked the Assistant Secretary-General, OPS, whether any action had been taken by the Administration concerning payment of his SPA. On 21 October 1986, the Chief, Administrative Review Unit, informed the Applicant that the Administration would conduct administrative review of his case. Not having received a further reply from the Secretary-General, the Applicant lodged an appeal with the Headquarters Joint Appeals Board (JAB) on 13 January 1987.

On 9 July 1987, the Classification Section, Office of Human Resources and Management (OHRM¹), classified the post of Chief, AMS, at the P-5 level. The Classification Notice stated: "Functions classified in response to a request for an SPA. Functions should be reviewed upon long-term agreement between FAO/ECA on the status of the Chief of Section post".

According to a statement by the Respondent, when OHRM reviewed the Applicant's request, it was agreed that, although payment of an SPA was discretionary, the Applicant would probably have received an SPA but for the confusion between ECA and FAO as to who was responsible for payment of the SPA and for the confusion

¹ Successor of OPS.

between Headquarters and ECA/FAO concerning the classification of the post. The Assistant Secretary-General, OHRM, therefore authorized payment of an SPA to the Applicant at the P-4 level, for the period running from 6 January 1985 to 14 May 1986, the date of his separation from service, on the condition that the Applicant withdraw his appeal before the JAB and in full and final settlement of the appeal. In a cable of 31 March 1988, the Applicant was advised of this offer and also informed that pursuant to personnel directive PD/1/84 an SPA was not payable at more than one level higher than that of the staff member's grade.

In a letter of 12 April 1988, the Applicant rejected the offer of settlement, on the grounds that under staff rule 103.11, he should be paid an SPA to the P-5 level, the level of the post in which he was serving. On 13 April 1988, the Applicant requested review of the case by the JAB.

The JAB adopted its report on 8 July 1988. Its conclusions and recommendation read as follows:

"Conclusions and recommendation

24. (a)The Panel finds that the Classification Section, OHRM, reclassified the post of the Chief, Agricultural Marketing Section in the ECA/FAO Agriculture Division to the P-5 level for SPA purposes on 9 July 1987 i.e. thirteen months after the appellant had separated from the service of the Organization.
- (b)The Panel therefore finds that the appellant during the period of service as Officer-in-Charge of the Agricultural Marketing Section, ECA/FAO Agriculture Division, was serving against a P-4 post.
- (c)The Panel finds that the approval of the ASG [Assistant Secretary-General], OHRM, granting the appellant SPA to the P-4 level was consistent with the rules, policy and practice of the Organization.
- (d)The Panel recommends that the offer of SPA to the P-4 level to the appellant for the period involved be renewed and payment made effective 6 January 1985 through his separation date.

25. The Panel makes no other recommendation in support of the appeal."

On 13 July 1988, the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, having re-examined his case in the light of the Board's report, had decided:

"... in final settlement of [his] case, to grant [him] a Special Post Allowance (SPA) to P-4 level for the period 6 January 1985 to 14 May 1986, the date of [his] separation from service, as authorized by the Assistant Secretary-General for Human Resources Management and offered to [him] on 1 April 1988, and to take no further action on [his] case".

He added:

"I should like to note in this connection that, in accordance with staff rule 103.11(b) and personnel directive PD/1/84, paragraph 8, granting of an SPA is within the discretionary authority of the Secretary-General, in exceptional circumstances, and not normally payable at more than one level higher than that of the staff member. Furthermore, according to established policy and practice, reclassification of posts do not have retroactive effect."

On 12 January 1989, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Under staff rule 103.11 if an SPA is granted to a staff member at the P-3 level, performing functions at the P-5 level, on a post classified at the P-5 level, the SPA should be paid to the P-5 level.

2. The Respondent's decision of 9 July 1987, classifying the post of Chief, AMS, at the P-5 level, applies to the period for which an SPA was granted to the Applicant.

Whereas the Respondent's principal contentions are:

1. The Respondent's decision of 9 July 1987, classifying the post of Chief, AMS, at the P-5 level, does not retroactively apply to the period for which an SPA was granted to the Applicant.

2. Under staff rule 103.11 and the other relevant rules and procedures issued by the Respondent to govern the grant of SPAs, the amount of SPA payable to the Applicant was limited to the salary increase he would have received had he been promoted from P-3 to P-4.

The Tribunal, having deliberated from 25 April to 11 May 1990, now pronounces the following judgement:

I. The application is directed against the decision by the Respondent to grant the Applicant a special post allowance (SPA) to the P-4 level, instead of an SPA to the P-5 level.

II. The Tribunal notes that the Applicant, a staff member at the P-3 level, was designated, effective 19 October 1984, as Officer-in-Charge of the Agricultural Marketing Section (AMS) in the Joint ECA/FAO Agriculture Division. He served in that capacity until his separation from service on 14 May 1986 and he was offered an SPA to the P-4 level, for the period during which he had been in charge of that post.

III. The Applicant contends that the SPA which had been granted to him should be paid at the P-5 level, in accordance with staff rule 103.11(d), as interpreted by him.

IV. The Tribunal observes that staff rule 103.11(d), in force at the time the Applicant was serving as Officer-in-Charge, provided that: "The amount of the special post allowance shall be equivalent to the salary increase ... which the staff member would have received had the staff member been promoted to the level of the post in which he or she is serving."

V. The Tribunal also observes that personnel directive PD/1/84 of 1 March 1984, which provides guidelines for the application of staff rule 103.11, states in paragraph 8 that: "The SPA is not normally payable at more than one level higher than that of the staff member except when a staff member at the General Service level is granted an SPA to the Professional level ...".

VI. The Tribunal takes note that the Respondent decided, as appears from the Report of the Secretary-General on Personnel Questions to the Fifth Committee of the General Assembly (A/C.5/44/2) of 20 September 1989, to amend staff rule 103.11(d) by replacing the sentence: "The amount of the special post allowance shall be equivalent to the salary increase ... which the staff member would have received had the staff member been promoted to the level of the post in which he or she is serving" by a new sentence: "The amount of the special post allowance shall be equivalent to the salary increase ... which the staff member would have received had the staff member been promoted to the next higher level." (Emphasis added).

VII. In the view of the Tribunal, this was a clarifying amendment to staff rule 103.11(d), establishing the amount to be received by staff members who are granted an SPA. It reflects the practice in existence prior to the amendment, which precludes inter alia a staff member serving at the P-3 level from receiving an SPA to the P-5 level.

VIII. At the same time the Tribunal considers that it is necessary to recall other relevant elements of the practice of the United Nations in the matter of payment of an SPA. As indicated in Judgement No. 154, Monasterial (1972), paragraph VIII, reproducing a statement by the Respondent, in reply to a question put by the Tribunal:

"[the] Secretary-General consistently exercises his discretion under staff rule 103.11 only in cases where he may effect payment of allowance with funds allocated to post at higher level authorized by official manning table approved in budget by General Assembly. Under budgetary procedure, Secretary-General cannot consider granting allowance attaching to post which does not exist in official manning table."

IX. In this respect, the Tribunal recalls its own opinion, as expressed in the above mentioned Judgement, paragraph IX:

"... the criterion that the assumption of higher responsibilities for the purposes of a special post allowance should be evidenced by assignment to a post at the higher level on the official manning table is a reasonable one and within the authority of the Secretary-General to prescribe."

X. In the present case, the Tribunal finds that during the period of his service as Officer-in-Charge, AMS, the post the Applicant was encumbering was invariably at the P-4 level, as evidenced by other staff members who encumbered the same post prior to him at the identical level. Consequently, if the Applicant had been promoted at that time, he would have been promoted to the P-4 level and not to the P-5 level, a post which did not exist on the official manning table.

XI. The Tribunal notes that only on 9 July 1987, i.e. 13 months after the Applicant had separated from the service of ECA, the post of Chief, AMS, in the Joint ECA/FAO Agriculture Division was reclassified to the P-5 level by the Classification Section of the Office of Human Resources and Management.

XII. It is the view of the Tribunal that the decision by the Respondent of 9 July 1987, classifying the above-mentioned post at the P-5 level, does not have retroactive effect to the period for which an SPA to the P-4 level was granted to the Applicant. In the circumstances, that decision only had prospective effect and any

question of its retroactive application to staff members serving on that post prior to its reclassification becomes irrelevant.

XIII. In the light of the above, the Tribunal concludes that the Secretary-General's decision dated 13 July 1988, to grant the Applicant an SPA to the P-4 level, for the period 6 January 1985 to 14 May 1986, the date of his separation from service, is in accordance with the terms of PD/1/84 of 1 March 1984, and is consistent with the rules, policy and practice of the United Nations. The Tribunal finds no justification for the payment of an SPA to the P-5 level.

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

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Arnold KEAN
Member

Ioan VOICU
Member

Geneva, 11 May 1990

R. Maria VICIEN-MILBURN
Executive Secretary