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ADMINISTRATIVE TRIBUNAL

Judgement No. 473

Case No. 500: DODD

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. Francisco A. Forteza;

Whereas, at the request of Robert Alan Dodd, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 10 February 1989, the time-limit for the filing of an application to the Tribunal;

Whereas, on 6 February 1989, the Applicant filed an application, the pleas of which read as follows:

"PLEAS ...

(a) Preliminary measures:

Applicant requests copies of any and all records of the Advisory Panel on External Studies regarding their recommendation on Applicant's request for assistance in August 1987 and in 1985 and an opportunity to provide comment on these records as appropriate.

(b) Decision contested:

Applicant contests the apparent October 1987 decision of the Assistant Secretary-General for Human Resources Management denying assistance to participate in external studies in the form of Annual Conference of the International Personnel Management Association.

(c) Obligation invoked:

Applicant invokes the obligation under Staff Regulation VIII of the United Nations and the Secretary-General, as its Chief Administrative Officer, to afford equitable representation to all staff members.

(d) Compensation claimed:

Compensation of [US]\$920 for costs associated with external studies;  
Compensation for four days of annual leave expended in lieu of special leave to attend external studies;  
Compensation not less than [US]\$3,000 for failure to provide equitable representation."

Whereas the Respondent filed his answer on 15 March 1989;  
Whereas the Applicant filed written observations on 27 March 1989;

Whereas the facts in the case are as follows:

Robert Alan Dodd entered the service of the United Nations on secondment from the Government of the United States of America on 21 April 1980. He was initially offered a three month fixed-term appointment at the P-4, step IV level as a Classification Officer in the then Office of Personnel Services (OPS). The Applicant subsequently served on a series of further fixed-term appointments until 31 March 1988, when he separated from the service of the Organization. From 10 January 1985, the Applicant served as Acting Chief, Classification Section, at the Division for Policy Co-ordination, OPS.

On 25 August 1987, the Applicant sought approval, under ST/AI/281, concerning the U.N. External Studies Programme, to attend the International Conference on Public Personnel Administration, in Ottawa, Canada, for a period of four days running from 4 to 8 October 1987. The Applicant's request was endorsed by the Applicant's supervisor, the Director of the Division for Policy Co-ordination, who noted that the conference would "provide [the Applicant] with information of a number of current developments

which may be used by the United Nations in adapting job classification to the needs of the UN and to the technological and organizational changes taking place". The request was also endorsed by the Executive Office of the Department of Administration and Management.

On 7 October 1987, the Secretary of the Advisory Panel on External Studies informed the Applicant that the Panel had recommended against the Applicant's request on the ground that "the Panel considered issues to be discussed at the conference not specific to the work of the Classification Section". According to the record of the case, the Panel approved attendance to the same conference for two other staff members of the Office of Human Resources Management<sup>1</sup> (OHRM).

The Applicant attended the conference at his expense, and although he received no financial assistance from the United Nations, submitted on 20 October 1987, a report on the conference to the Training and Examinations Service, OHRM, as required by ST/AI/281 which provides that staff members receiving assistance in pursuing external studies should submit "a concise report on the studies undertaken, their relevance and possible value for other staff members ...".

On 20 October 1987, the Applicant requested the Secretary-General to review the decision by the Advisory Panel on External Studies, denying his request for assistance to attend the conference. Having received no reply from the Secretary-General, on 3 and 23 February 1988, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 27 July 1988. Its conclusions read as follows:

"Conclusions

14. The Panel concludes that the provisions of ST/AI/281 were properly applied in considering the request of the appellant for funding his participation in the Conference.

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<sup>1</sup> Successor of OPS.

15. The Panel further concludes that there is no evidence that the Advisory Panel on External Studies had been unfair or inconsistent in arriving at its decision.
16. Accordingly, the Panel makes no recommendation in support of the appeal."

On 16 August 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 to maintain the contested decision and to take no further action on the case.

On 6 February 1989, the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The JAB did not grant the Applicant's counsel his request for an oral hearing and did not properly review the substance of the case thus denying the Applicant due process of law.
2. The Advisory Panel on External Studies discriminated against the Applicant because one of its members, an elected representative from the U.N. Staff Committee, was personally biased against him.
3. An elected official of the Staff Union, fulfilling union activities, should not sit in the Advisory Panel in contravention of the Staff Regulations and Rules.

Whereas the Respondent's principal contentions are:

1. The grant of paid external study leave is discretionary. Consequently, a staff member cannot challenge the merits of a decision rejecting an application for such leave.
2. The modalities of considering staff for study leave are set out in an Administrative Instruction. Staff do not have a right to be considered by other methods of selection.

The Tribunal, having deliberated from 30 April to 11 May 1990, now pronounces the following judgement:

I. The Applicant's claim arises from his failure to obtain assistance under the external studies programme authorized by the General Assembly. ST/AI/281 of 17 June 1981 is the relevant Administrative Instruction, which states its purpose to be "to outline the procedures by which staff members may apply for assistance under the external studies programme authorized by the General Assembly in the interest of the Organization and to describe the conditions under which assistance will be granted" (emphasis added) (para. 1). Para. 2 states inter alia that "Assistance will be granted only when the studies are clearly in the interest of the Organization".

II. The Administrative Instruction therefore makes it quite clear that the primary purpose is to benefit the Organization, not to confer on the staff member a right to engage in external studies, though he seems likely to benefit incidentally from them.

III. ST/AI/281 replaced ST/AI/243 of 15 April 1977, with no amendments material to the present case. ST/AI/243 was considered by the Tribunal in Judgement No. 263, Elmoznino (1980), in which the view was expressed that "the Instruction did not confer a right to be granted assistance". The same conclusion must be reached with regard to ST/AI/281. It would be for consideration whether, if the Respondent's refusal to grant assistance in the present case had been faulted by procedural or other defects (which in the Tribunal's view it was not) the Applicant would have been entitled to compensation on that account. But no such issue is presented in this case.

IV. The Applicant bases his claim not on a failure to follow the

prescribed procedure in ST/AI/281, but on the alleged prejudice against him on the part of one of the three members of the Advisory Panel which advised the Respondent to refuse to grant assistance. That Panel, under paragraph 10 of ST/AI/281, was appointed by the Secretary-General and was composed of the Director of the Division of Personnel Administration, OPS, as Chairman, and two other members, one of them appointed on the recommendation of the Staff Committee. The member appointed on the recommendation of the Staff Committee was in fact its President who, when the pressure of other business so required, substituted the First Vice-President of the Staff Committee. In consequence, the membership of the Panel changed from time to time, but the third member was always an elected official of the Staff Committee.

V. The Respondent does not deny that the Applicant was disliked by the Staff Committee, as evidenced by the reference to "Doddism" in its publication "U.N. Report", February 1986, and other adverse observations. Perhaps this may have affected one of the three Panel-members (the member appointed on the recommendation of the Staff Committee), but there is no evidence that it affected the other two. The Panel unanimously advised that it "considered issues to be discussed at the Conference not specific to the work of the Classification Section", a conclusion which could, in the Tribunal's view, have been reasonably reached by any Panel, however composed. For that reason, the Applicant's proposed studies in Ottawa were not considered to be "clearly in the interest of the Organization" as required by ST/AI/281. The Tribunal therefore does not accept the Applicant's contention that the denial of his request for assistance was due to prejudice or, as he puts it, the failure of the Respondent to "afford equitable representation [on the Panel]".

VI. The Applicant has contended that an elected official of the Staff Committee ought not to be a member of a Panel dealing with the case of an individual staff member. ST/AI/281 is silent on this

point and the Staff Rules do not explicitly address the question of bias or conflict of interest, actual or apparent, in connection with membership of such a Panel. These important matters are, however, for consideration by the Administration rather than by the Tribunal.

VII. Furthermore, the Tribunal does not consider that proof of prejudice can be found in the grant of assistance to two staff members other than the Applicant. Bearing in mind the limited resources of the Organization, mentioned in ST/AI/281, paragraph 7, a choice had to be made, and the Panel was of the opinion that the subject-matter of the Conference was more closely related to the work of the other two staff members than to that of the Applicant.

VIII. The Applicant arranged to attend the Ottawa Conference at his own expense, and then claimed reimbursement from the Administration. This, in the view of the Tribunal, in no way strengthened his claim.

IX. The Applicant claims to be entitled to compensation on the ground that the Joint Appeals Board (JAB) had deprived him of due process, in not granting him an oral hearing. It is, however, beyond doubt that the JAB may, if it thinks fit, dispense with oral argument if it considers that the case has been sufficiently presented.

X. The Tribunal has learned, since starting its deliberations on this case, that the Applicant has passed away.

The Tribunal wishes to record that there is no further evidence it would have requested from the Applicant had he still been in a position to provide it.

XI. For the foregoing reasons, all of the Applicant's pleas, including his request for the production of documents, must be rejected.

(Signatures)

Jerome ACKERMAN  
Vice-President, presiding

Arnold KEAN  
Member

Francisco A. FORTEZA  
Member

Geneva, 11 May 1990

R. Maria VICIEN-MILBURN  
Executive Secretary