
ADMINISTRATIVE TRIBUNAL

Judgement No. 503

Case No. 372: NOBLE
Nations

Against: The Secretary-General
of the United

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Roger Pinto, President; Mr. Jerome
Ackerman, Vice-President; Mr. Ioan Voicu;

Whereas, in Judgement No. 382, delivered on 25 May 1987,
the Tribunal held that:

"(a) the Administration acted in gross derogation of
the Applicant's rights under her contract of
employment in its prolonged withholding of the
Applicant's pay, and in the procedures it followed in
making other deductions for lateness, as well as in
its direction to the bank;

(b) in consequence of the Administration's actions,
the Tribunal awards the Applicant US\$7,000.00 in
damages;

(c) in conformity with the principles set forth
above in paras. VII through XIV, the Administration
should recalculate the amount, if any, owing to it
with respect to non-compensable time after July 31,
1981, for which the Applicant was paid, and after
taking into account the amounts previously paid to the
Applicant, promptly pay her the amounts, if any, for
each pay period that should have been paid to her,
plus interest at the rate of nine per cent per annum
from the respective dates when she should have
received payment;

(d) if the parties are unable to concur on the quantum within 90 days from the date of the Tribunal's judgement, the Tribunal will resolve any such remaining disputed issues upon request of either party;

(e) all other pleas are rejected."

Whereas, in Judgement No. 407, delivered on 13 November 1987, the Tribunal decided that the Respondent should pay "salary to the Applicant for 2 work days in accordance with [a set of guidelines set forth in the Judgement]" and also ordered the Respondent to pay the Applicant "interest as provided in para. [XX(c) of Judgement No. 382] ... from the date [the Applicant] should have received any given payment until the amount was or is paid to her". (Cf. Judgement No. 407, paras. VI and XIII)

On 6 June 1988, the Applicant wrote to the Executive Officer of the Department of Technical Co-operation for Development (DTCD) regarding payment of interest to her in the amount of US\$4,302.28, on her withheld salary, in accordance with the directives in the Tribunal's judgements. She noted that her acceptance of this amount should "in no way be construed as acceptance" of any other amount to which she believed she was entitled and noted that had the Tribunal's "directives been taken into consideration ..., the amount would have been greater than the figure at which [the Respondent] arrived".

On 12 November 1988, the Applicant wrote to the Deputy to the Under-Secretary-General for Legal Affairs, Office of Legal Affairs concerning the implementation of Judgement No. 407 and further contesting the memorandum in which the Respondent had calculated her absences and late arrivals, as well as the calculation of the interest due to her in accordance with the Tribunal's judgements.

After a lengthy exchange of correspondence between the parties, in a letter dated 11 January 1989, the Applicant informed the Executive Secretary of the Tribunal that she had decided to submit to the Tribunal a request for interpretation of Judgement No. 407.

On 7 June 1989, the Applicant filed an application, containing the following pleas:

II. APPLICANT'S PLEAS

4. Applicant requests the Tribunal, under article 12 of its Statute, to review Judgement No. 407 rendered on 13 November 1987. Specifically:

- (a) To interpret and clarify in an unequivocal manner, the said judgement in respect of the criteria to be applied in the computation of charges for lateness during the period 1 August 1981 to 31 May 1987, taking into account the relevant provisions of ST/AI/221.
- (b) To order the Respondent to use the same criteria in computing charges for lateness during the subsequent period 1 June 1987 to 31 December 1988, the date of her retirement, also taking into account the relevant provisions of ST/AI/221, and the Tribunal's view contained in paragraph X of Judgement 407, that it accepted the Administration's determination 'without prejudicing in any other proceeding, any rights the Applicant may have regarding sick or annual leave with respect to any period of time'.
- (c) To order the correction of arithmetical and other errors arising from Respondent's misinterpretation of Judgement No. 407.
- (d) To clarify and interpret paragraph XX(c) of Judgement No. 382 as it relates to Judgement No. 407, and to order Respondent to fully implement said paragraph in respect of payment of the nine per cent per annum interest which the Tribunal had ordered, on all amounts due to Applicant 'from the date she should have received any given payment until the amount was or is paid to her'.<emphasis added>"

Whereas the Respondent filed his answer on 8 January 1990;
Whereas the Applicant filed written observations on 15 May 1990;

Whereas the Applicant's principal contentions are:

1. The Respondent has failed to fully implement Judgement No. 407.
2. The Applicant is entitled to 167 days additional pay plus the nine per cent interest ordered by the Tribunal.
3. The Respondent made an error in the calculation of the nine per cent interest paid on the salary deductions and withholdings.

Whereas the Respondent's principal contentions are:

1. The method prescribed by the Tribunal to calculate the salary deductions was properly followed by the Respondent.
2. The corrections of the salary deductions questioned here, including the one for 1985, had already been submitted to and settled by the Tribunal.
3. The Respondent applied the method mandated by the Tribunal in calculating the nine per cent interest on the Applicant's salary withholdings.

The Tribunal, having deliberated from 12 February to 25 February 1991, now pronounces the following judgement:

I. To the extent that this application purports to be, as the Applicant's pleas state, a request "...under article 12 of [the Tribunal's] Statute to review Judgement No. 407 rendered on 13 November 1987...", it is irreceivable. Article 12 plainly establishes that applications under it "must be made within ... one year of the date of the Judgement." This application was not submitted until June 1989, and it is therefore untimely under article 12. Nor is there any basis for considering this application under the provisions of article 12 dealing with

clerical or arithmetical mistakes or other accidental errors, for none have been claimed to exist.

II. The Applicant's initial plea is that the Tribunal "interpret and clarify in an unequivocal manner" Judgement No. 407. Specifically, the Applicant asks the Tribunal to rule that the Administration is required to compensate her for time not worked due to the Applicant's lateness unless the length of the lateness warrants a deduction of a half day or a full day of pay in accordance with the formula described in paragraph 16 of administrative instruction ST/AI/221. This is essentially the same argument that the Applicant advanced before the Tribunal in the proceeding which led to Judgement No. 382, and it is, in substance, one of the points which the Applicant unsuccessfully sought to relitigate in the proceeding which led to Judgement No. 407. This issue was clearly and unequivocally resolved against the Applicant in Judgement No. 382. Accordingly, the Tribunal finds this request for a ruling to be frivolous and a burdensome imposition on the Tribunal. In reality, the Applicant is seeking a second time to relitigate the same issues. As the Tribunal observed in Judgement No. 497, Silveira (1990), para. XV, "attempts to re-argue issues already decided by Judgement ... and which are res judicata" are considered to be "improper" and an "abuse" of Tribunal procedures.

III. The Applicant's next plea suffers from a similar deficiency. In it, she seeks an interpretation of Judgement No. 407 that would find the Administration to have wrongfully deducted over US\$6,000 from her salary in 1985. This request seeks to relitigate factual issues involved in the proceeding which led to that judgement and which could and should have been raised by the Applicant in that proceeding, if at all. It is plainly frivolous for the Applicant to attempt to relitigate factual issues in the guise of seeking an interpretation of a

Tribunal judgement. Although Judgement No. 407 sought to avoid prejudice to the Applicant's position in a possible future proceeding that might, for example, involve disciplinary action, nothing in Judgement No. 407 was intended to permit relitigation of that judgement itself.

IV. Although the Tribunal does not wish to discourage commendable zeal on the part of counsel in providing effective representation to applicants, the case load of the Tribunal is such that, in order to preserve its ability to deal as expeditiously as possible with non-frivolous applications pending before it, the Tribunal must act to deter the submission of plainly frivolous pleadings.

V. In this case, the Respondent recognizes that an application may properly request the Tribunal directly to examine an allegation that an order of the Tribunal has not been implemented correctly. Although the Applicant attempts to justify some of her pleas on the theory that Judgement No. 407 was not implemented correctly, the Tribunal considers that the Respondent's compliance with Judgement No. 407, including his calculation of interest, was reasonable and proper. As noted above, the dominant theme of the application is an improper effort to relitigate factual and legal issues involved in Judgements No. 382 or 407 or both. However, the Tribunal notes that a communication dated 28 June 1990, from the Secretary of the United Nations Joint Staff Pension Board to the Director of the Accounts Division, points out that the Pension Fund has not yet received a final report on the correct pension contributions by the Organization. The Tribunal trusts that if this report has not already been furnished, it will be furnished promptly.

VI. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Roger PINTO
President

Jerome ACKERMAN
Vice-President

Ioan VOICU
Member

New York, 25 February 1991

R. Maria VICIEN-MILBURN
Executive Secretary