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ADMINISTRATIVE TRIBUNAL

Judgement No. 504

Case No. 540: COULIBALY

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Ahmed Osman, Vice-President, presiding;  
Mr. Samar Sen; Mr. Ioan Voicu;

Whereas, on 10 October 1989, Adama Coulibaly, 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 27 November 1989, the Applicant again filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 26 January 1990, the Applicant, after making the necessary corrections, filed an application, containing the following pleas:

"II - PLEAS

I have the honour to request you to assist me in the restoration of my rights.

The total amount due is as follows:

i/15 -As per the Letter of Appointment from 11 March 1986 to  
10 January 1987 (ten months) for 961,000 FCFA  
[Francs CFA] per month:

961,000 x 10..... 9,610,000 FCFA

ii/17 -As per the Personnel Action Form No. 708-799 issued on separation on 18 August 1987 - 60 days (two months) for 961,000 FCFA:

Thus 961,000 x 2..... 1,922,000 FCFA

iii/ -Dependency allowance in respect of dependent spouse:

Thus 185,000 F CFA x 12..... 2,220,000 FCFA

iv/15 -Dependency allowance in respect of dependent children:

60,000 F CFA per month and per child

(5) Thus..... 3,600,000 FCFA

Mr. President, the Project Mali/84/005 owes to me a total of 17,352,000 FCFA, or US\$ 24,062.

In addition, Mr. President, I should be grateful if you would help me to recover this remaining sum under the contract, in accordance with the terms of staff rule 104.12(b).

As to the full reimbursement of all the expenses which I have incurred in connection with various correspondence.

The authorization to approach the local authorities of UNDP who are not involved with the problem.

Finally, Mr. President, I pray you to condemn Mr. Marc SIMONOT, Chief of the Project MALI/84/005 and his accomplices for fraud, and to impose the maximum penalty provided for in the Rules of the Administrative Tribunal."  
(Translation by the Tribunal)

Whereas the Respondent filed his answer on 11 April 1990;

Whereas the Applicant filed written observations on 5 June 1990;

Whereas the facts in the case are as follows:

The Applicant was initially hired by the United Nations on 10 September 1985. He was offered a six-month special service agreement to work on an Underground Water Exploration Project in Bamako, Mali. Then, on 11 March 1986, the Applicant was offered a fixed-term appointment of ten months at the G-4, step 1 level as a Warehouseman on the same project. According to the salary scales then in force in Bamako, a G-4, step 1 staff member was entitled to receive an annual net salary of 961,000 Francs CFA.

According to the documents in the Applicant's personnel files, the Applicant was notified of the decision not to renew his appointment in a letter of 30 December 1986 and he was separated from service as of 10 January 1987.

The Respondent asserts that all payments due to the Applicant as of 10 January 1987, were made to him. In accordance with a revision of UN salaries, retroactive to 1986, an additional sum of money was paid to the Applicant for the period of his appointment, i.e. from 11 March 1986 to 10 January 1987.

On 14 July 1987, the Applicant wrote to the UNDP Resident Representative, claiming that he had been unfairly treated by the Chief of his project and requesting that he be paid all his entitlements in accordance with the relevant Staff Regulations and Rules.

On 15 July 1987, the Resident Representative informed the Applicant that he had received his salary and all the payments due to him in strict accordance with the Staff Rules. He noted that the Administration had authorized all these payments in view of the Applicant's family situation, although the rules permitted their retention until the conclusion of an investigation concerning the Applicant's employment.

The Applicant subsequently claimed that the salary set out in his Letter of Appointment was a monthly rather than an annual salary

and also that all allowances associated with that salary were monthly rather than annual amounts.

On 19 August 1987, the Applicant asked the Secretary-General for payment of additional salary and allowances. An exchange of correspondence ensued between the Applicant and the Respondent. The Respondent maintained that the Applicant's claims were without foundation.

On 5 December 1988, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 29 August 1989. Its considerations, conclusions and recommendation read as follows:

"Considerations

...

26. In connection with commutation of annual leave, the Panel noted that annual leave is granted at the rate of 30 days per year, or 2.5 days per month. For the purpose of commutation, payment for a maximum of 60 days total accrued annual leave may be claimed, but only if the staff member has accumulated this number of days of annual leave. (See staff rule 105.1(a) and (c).) The appellant claims that he is owed compensation for 60 days of annual leave, yet he was employed by the Organization under a regular fixed-term contract for only 10 months. Therefore, the Panel considered that the appellant could not have accumulated more than 25 days of annual leave during his period of service. Provided that the appellant did not take any leave during his 10 month term, he would be entitled to a commutation of a total of 25 days of annual leave (10 months at 2.5 days per month), which is the amount the Respondent claims to have paid to him.
27. With regard to the appropriate salary due the appellant under the terms of his fixed-term appointment, the Panel reviewed the official table of General Service Salaries and Allowances for Bamako, Mali, and determined that the salary stated in the appellant's fixed-term contract, as subsequently adjusted to reflect the 1987 retroactive salary increase, was indeed an annual salary and was the annual salary payable to all General Service staff members in Bamako, serving at Level 4, Step 1. The Panel, therefore, did not consider as reasonable the appellant's allegation that the stated salary was really

a monthly rather than an annual salary, especially in light of his previous comparable earned income. In the Panel's view, it would have been unrealistic for the appellant to reasonably anticipate a raise in annual income from 600,000F CFA [Francs CFA], which he had received under his SSA [Special Service Agreement] just prior to his fixed-term appointment, to 9,610,000F CFA per year, for performing virtually the same services for the same employer. Similarly, the Panel noted that the amounts specified for dependency allowances are stated in the official Salary Tables as annual amounts. In the Panel's view, it would be especially doubtful that a staff member having previously received an annual salary of 600,000F CFA could reasonably expect to receive dependency allowance of 5,820,000F CFA a year.

28. The Panel did consider, however, that certain failings on the part of the Administration made it possible for the appellant to feel justified in filing the present appeal, an appeal which the Panel felt, could have been otherwise avoided.
29. In this connection, the Panel noted first that prior to his fixed-term appointment, the appellant served on an SSA for a period of six months. That SSA provided that the appellant would be paid a salary of 50,000F CFA for the work performed; however, it failed to specify whether that represented payment for the full term of six months, or whether it was to be paid per month. The Panel, taking into account the general salary level of General Service staff in Bamako, concluded that such payment would have had to be on a monthly basis. By contrast, the Panel noted that the appellant's subsequent fixed-term contract also specified a sum, namely 961,000F CFA, without specifying whether this was to be paid on an annual basis or a monthly basis, except for reference to the Staff Regulations and Staff Rules. Moreover, the Panel noted that the said fixed-term appointment was not signed and conveyed to the appellant until after his period of service had expired. The Panel observed that during the term of service when the appellant was presumably paid salary and benefits on the basis of an annual salary of 960,000F CFA, he registered no objection to the sums remitted. The Panel had no doubt but that if the appellant truly felt entitled to a salary twelve times higher than the one he was receiving -- if his salary was so out of scale with what others similarly situated at Bamako were receiving or so out of line with salaries for comparable work at Bamako -- the appellant would have complained after his first salary payment. For this reason also, the Panel could not credit

appellant's contention that he was paid improperly during his period of service. During his ten months of service, the appellant raised no objection to his pay, or lack thereof, until after his post facto contract was given to him. The Panel was convinced that the less than accurate drafting of both the SSA and the fixed-term contract, complied [sic] with the post facto signing and delivery of the latter, were directly responsible for the filing of the present appeal.

30. While the Panel could find no basis for sustaining the present appeal, it was convinced that the time and effort wasted by the Organization in the consideration of this matter was directly attributable to administrative error in the drafting and late signing of the appellant's SSA and fixed-term contract.

#### Conclusions and Recommendation

31. In view of the foregoing, the Panel concludes that the Appellant was appropriately compensated for his service to the Organization and makes no recommendation in support of this appeal."

On 12 September 1989, the Acting Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the Board's report and advised him that: "The Secretary-General, having re-examined your case in the light of the Board's report, has decided to maintain the contested decision and to take no further action on your case."

On 26 January 1990, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's letter of appointment provides a monthly rather than annual salary of 961,000 Francs CFA, which when multiplied by ten months as per the fixed-term contract, results in a claim of 9,610,000 Francs CFA for salary owed.

2. The Applicant is entitled under staff rule 109.8 to compensation for sixty days annual leave, resulting in a claim for

1,922,000 Francs CFA.

3. Dependents' benefits due and owing are in the amount of 2,220,000 Francs CFA for the Applicant's wife and 3,600,000 Francs CFA for his children.

Whereas the Respondent's principal contention is:

The application is without foundation as the Applicant received his full entitlements in accordance with the Staff Regulations and Rules.

The Tribunal, having deliberated from 14 February to 26 February 1991, now pronounces the following judgement:

I. The Applicant claims ten times the salary and emoluments that were actually paid to him by the Administration because his Letter of Appointment, which was for a ten-month period, provided for a salary of "961,000 Francs CFA", without specifying whether it was a monthly salary or an annual salary. The Applicant alleges on that basis that it was a monthly salary and also seeks payment for 60 days leave.

II. The Tribunal cannot concur with the Applicant's contention. In accordance with the official General Service Salary and Allowances Scale for Bamako, Mali, the salary stated in the Applicant's fixed-term appointment, as subsequently adjusted to reflect a 1987 retroactive salary increase, was an annual salary, payable to all General Service staff members in Bamako, serving at level 4, step 1. Therefore, the Tribunal finds unjustifiable the Applicant's allegations that the stated salary was a monthly rather than an annual salary, especially in the light of his previous comparable earned income.



III. The Tribunal notes that just prior to his fixed-term appointment, the Applicant had received, under a Special Service Agreement (SSA), a monthly income of 50,000 Francs CFA for a period of six months. In the Tribunal's view, it would have been quite unrealistic for the Applicant to anticipate an increase in his income for a period of six months, from 300,000 Francs CFA to 9,610,000 Francs CFA per year, for performing virtually the same services for the same employer in the same duty station.

IV. Furthermore, the Tribunal observes that irrespective of the relevant figures concerning the entitlements due to the Applicant, the general rules that govern the establishment of such entitlements cannot be ignored. The expression "Traitement soumis à retenue" or "Assessable Salary", which appears in the standard letters of appointment, cannot be interpreted arbitrarily but must be read in the light of all the provisions contained therein. The letters of appointment specify that the salary is payable in accordance with the salary scale set out in the Staff Regulations and Rules. Paragraph 7 of Annex I to the Staff Regulations provides that the Secretary-General fixes salary scales for locally recruited General Service staff. The Secretary-General promulgated salary scales for Mali, for the General Service Category, and the level of emoluments established for level 4, step 1 is the rate actually paid to the Applicant, i.e. 961,000 Francs CFA per annum. That figure appears on the Applicant's Letter of Appointment. The Tribunal notes that in accordance with a 1987 salary revision, the Applicant's salary had been adjusted with retroactive effect to March 1986, to 1,011,000 Francs CFA net per year. That figure appears in Revision 12, dated March 1987, of the official Salary Tables for Bamako, with the clear specification that it refers to annual salaries and allowances.

V. The Tribunal finds, therefore, that the Applicant was paid salary, emoluments and benefits in accordance with the Staff Regulations and Rules and his Letter of Appointment.

VI. At the same time, the Tribunal notes that during his ten months of service, the Applicant raised no objection to his pay. It was only when the Applicant signed his Letter of Appointment, at the expiration of his term of appointment, that he questioned the level of his emoluments.

VII. The Applicant makes an additional claim to dependency benefits for his wife and children, amounting to 5,820,000 Francs CFA a year, which exceeds the amounts due to him under the pertinent rules. The Tribunal finds such a contention unjustified, for the Applicant could be paid dependency benefits only at the rates set out in the Staff Regulations and Rules and could be entitled to no greater sums.

VIII. Moreover, the Applicant seeks payment for 60 days annual leave. The Tribunal notes that annual leave is granted at the rate of 30 days per year, or 2.5 days per month. Staff rule 109.8 entitles the Applicant only to leave actually accrued and does not entitle him to an automatic payment for the 60 working days referred to in the Staff Rules as the maximum number of days that can be commuted. Staff rule 109.8 states that: "If, upon separation from service, a staff member has accrued annual leave, the staff member shall be paid a sum of money in commutation of the period of such accrued leave up to a maximum of 60 working days". In the present case, provided that the Applicant did not take any leave during his ten-month term, he is entitled to be paid for a total of 25 days annual leave, which is the amount the Respondent claims to have paid to him.

IX. The Tribunal accordingly holds that the Applicant was appropriately compensated for his service to the Organization in accordance with the Staff Regulations and Rules and his Letter of Appointment.

X. The Tribunal considers, however, that a more accurate drafting of both the SSA and the fixed-term contract mentioned above, or a parallel document stating clearly the basis - monthly or annual - of the payments which were to be made to the Applicant, would have helped to avoid the confusion or misunderstanding which has led to the present case.

XI. In addition, for reasons not explained, the fixed-term appointment for the period 11 March 1986 - 7 January 1987, was conveyed to the Applicant and was signed by him only on 28 February 1987, after his term of service had expired. The post facto signing of the Letter of Appointment was the result of administrative negligence and should have been avoided.

XII. The Tribunal considers that the Administration should ensure that procedures concerning fixed-term appointments should, in the future, be strictly observed.

XIII. Despite these administrative shortcomings, the Tribunal holds that the Applicant has not suffered any injury and therefore rejects the application in its entirety.

(Signatures)

Ahmed OSMAN  
Vice-President, presiding

Samar SEN  
Member

Ioan VOICU  
Member

New York, 26 February 1991

R. Maria VICIEN-MILBURN  
Executive Secretary