
ADMINISTRATIVE TRIBUNAL

Judgement No. 567

Case No. 610: GISCOMBE

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Samar Sen,
Vice-President; Mr. Ioan Voicu;

Whereas, on 5 July 1991, Fitzgerald Giscombe, a former staff member of the United Nations, filed an application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 502, rendered by the Tribunal on 22 February 1991;

Whereas the application included the following pleas, requesting:

"I. PLEAS

1.... the Administrative Tribunal:

- (a) To re-examine his case covered by its Judgement No. 502: Giscombe (1991), pursuant to article 12 of its Statute, in the light of the vital documents submitted by his Counsel on 24 September 1990 to the Executive Secretary of the Tribunal who had evidently failed to place them before the Tribunal for its consideration, as required under paragraph 5 of article 6 of its Rules, causing thereby a 'miscarriage of justice' as well as a 'denial of justice' in his case.
- (b) To consider the feasibility of remanding his case to the Respondent, pursuant to paragraph 2 of article 9 of its Statute, for institution or correction of the required procedures in the

Advisory Board on Compensation Claims (ABCC) as well as in the Medical Board on the Applicant, whose gross procedural irregularities in dealing with his claims for enhanced disability and pension benefits under articles 11.3 and 11.2(d), respectively, of Appendix D to the Staff Rules had evidently caused a 'failure of justice' in his case.

(c) To hold oral proceedings on the case ..."

Whereas the Respondent filed his answer on 29 January 1992, in which he requested the Tribunal to dismiss the application in its entirety on the grounds that it did not satisfy the provisions of article 12 of the Tribunal's Statute and because the absence from the judgement of a reference to every communication of the parties "does not entitle a disappointed applicant to relitigate a claim."

Whereas the Applicant filed written observations on 24 February 1992;

Whereas, on 15 October 1992, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case have been set forth in Judgement No. 502:

The Tribunal, having deliberated from 20 October to 2 November 1992, now pronounces the following judgement:

I. The Applicant seeks revision of Tribunal Judgement No. 502 (1991) under article 12 of the Tribunal's Statute, and also seeks a remand, under article 9, paragraph 2, for correction of alleged procedural irregularities. The basis for the request for revision and remand is that two documents submitted by the Applicant on 24 September 1990, over one year after the Respondent's answer was filed, were not considered by the Tribunal. Article 12 of the Tribunal's Statute provides for revision of a judgement "on the

basis of the discovery of some fact of such a nature as to be a decisive factor ...". Article 12 also requires that, when the judgement was given, the fact must have been unknown to the party claiming revision. In the circumstances of this case, the Tribunal need not address the latter requirement, although the material facts contained in the two documents in question were already before the Tribunal in one form or another. In claiming that the two documents were not presented to the Tribunal, counsel for the Applicant has made offensive innuendo of intentional misconduct by the Secretariat of the Tribunal. The Tribunal finds such innuendo totally inadmissible. The Tribunal notes in this regard that the Respondent has also objected to this behaviour by counsel. In the past, the Tribunal has called to the attention of counsel for the Applicant, the need to conduct himself appropriately in dealing with matters before the Tribunal.

II. One of the above-mentioned documents consists of a letter dated 10 September 1990, from counsel for the Applicant to Dr. Lee, the Applicant's doctor and a member of the U.N. Medical Board in the Applicant's case. Annexed to the letter is a paper entitled "Counsel's Observations on the Gross Procedural Irregularities in the U.N. Medical Board on Fitzgerald Giscombe." The other document is a letter dated 20 September 1990, with an enclosed statement from Dr. Lee, replying to the letter from counsel for the Applicant dated 10 September 1990.

III. The letter dated 10 September 1990, from the Applicant's counsel transmitted to Dr. Lee various documents that had been presented to the Tribunal in the case, informed Dr. Lee of certain matters related to the case, and referred to the annex to the letter containing the observations of the Applicant's counsel concerning alleged gross procedural irregularities. Nothing in the letter

itself constitutes "a fact of such a nature as to be a decisive factor", which is a requirement for the revision of Judgement No. 502, under article 12 of the Tribunal's Statute.

IV. The annex to the 10 September 1990 letter is essentially a series of argumentative assertions concerning alleged gross procedural irregularities previously made by the Applicant and considered by the Tribunal prior to issuing Judgement No. 502. Nothing in this annex brings out a new fact that meets the requirement of article 12 of the Tribunal's Statute.

V. The letter dated 20 September 1990, from Dr. Lee to the Applicant's counsel encloses a statement signed by Dr. Lee in support of the Applicant's pleas, the nature of which gives rise to an inference by the Tribunal that it may have been drafted by the Applicant's counsel. In this statement, Dr. Lee concurs with the observations that were presented to him by counsel for the Applicant, together with the letter dated 10 September 1990. In addition, he makes a series of allegedly factual assertions, some of which are argumentative rather than medical in nature, and expresses a "considered opinion". The Tribunal finds that the statement by Dr. Lee is also essentially a repetition, in various ways, of points that were previously before the Tribunal and which were considered by it in arriving at Judgement No. 502. In the opinion of the Tribunal, nothing in this document constitutes a new fact of a nature requiring revision of Judgement No. 502.

VI. In view of the foregoing, the Tribunal concludes that there is no basis for revision of Judgement No. 502 under article 12 of the Tribunal's Statute. Nor, in the view of the Tribunal, is there any basis for the remand procedure requested by the Applicant.

VII. The application is therefore rejected.

(Signatures)

Jerome ACKERMAN
President

Samar SEN
Vice-President

Ioan VOICU
Member

New York, 2 November 1992

R. Maria VICIEN-MILBURN
Executive Secretary