
ADMINISTRATIVE TRIBUNAL

Judgement No. 575

Case No. 635: BURTIS

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Luis de Posadas Montero, Vice-President,
presiding; Mr. Arnold Kean; Mr. Ioan Voicu;

Whereas at the request of Farida Ghani Burtis, a former
staff member of the United Nations, the President of the
Tribunal, with the agreement of the Respondent, successively
extended to 1 and 21 October, 21 November 1991 and 21 February
1992, the time-limit for the filing of an application to the
Tribunal;

Whereas, on 15 November 1991, the Applicant filed an
application containing pleas which read, in part, as follows:

"Preliminary plea

...

- Plea 1. Appellant urges the Administrative Tribunal
to reject outright the contentions of the JAB
[Joint Appeals Board] panel...

My appeal was filed on time--within two
months of written notification of first
acknowledgement of administrative decisions
that disregarded my UN official employment
record, in my official status file in
Personnel Records, OHRM. The only date that
is relevant is that of written notification,
that is July 27, 1989. ...

- Plea 2. Retyping of all materials listed in two memos
dated Dec. 31, 1987 and Jan. 25, 1988, ... to
conform to stipulations of ST/AI/240/Rev.2

'Performance Evaluation System' and ST/AI/292 on filing of adverse materials... Substitution of OS [Official Status] files information ... by incorporating comparable information on me.

- Plea 3. ... I request a statement by the Administrative Tribunal indicating discrimination against a US citizen, myself, ...
- Plea 4. Consideration for other positions as remedial action for non-compliance of UN rules.
- Plea 5. Monetary compensation in the amount of at least two years base salary, as specified in article 9 of the Statute ... [and] a higher indemnity fixed by the Tribunal, in accordance with paragraphs 1 and 3 of article 9, plus three months net base salary for procedural delay.
- Plea 6. ...
- ..."

Whereas the Respondent filed his answer on 30 December 1991;
Whereas the Applicant filed written observations on 25 August 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 are as follows:

The Applicant was initially recruited by the United Nations as an Assistant Information Officer in the Department of Public Information (DPI) on a short-term appointment at the P-2 local level, for the duration of the 22nd session of the General Assembly, through 20 December 1967. She re-entered the service of the United Nations on 22 September 1981, also on a short-term appointment at the P-2 local level, as an Associate Information Officer for the duration of the 36th session of the General Assembly, through 16 December 1981. She then served on a number of Special Service Agreements as a panellist on World Chronicle television programmes, at the request of DPI. Between 1982 and

1989, she applied, unsuccessfully, for a number of UN positions with DPI.

On 7 June 1985, the Applicant wrote to the Director of Recruitment, in the Office of Personnel Services, alleging that she had not been selected for any of the posts for which she had applied because of "adverse information" about her, submitted by DPI to the appointment and promotion bodies. She suggested that any such adverse material be removed from her file.

On 23 July 1985, the Applicant wrote to the Co-ordinator for the Improvement of the Status of Women in the Secretariat asking her to intercede in support of her job application. In further letters to different officials at the Office of Human Resources Management (OHRM)¹/, the Applicant reiterated her allegations that she was not selected for the posts for which she had applied because of adverse material, allegedly contained in her official status file. She requested that, in conformity with the Secretary-General's instructions, all such material be purged or amended to conform with the official evaluations on her file.

On 4 March 1988, the Director, Recruitment and Placement Division, replying to letters by the Applicant dated 18 July 1987 and 25 January 1988, to the Assistant Secretary-General, OHRM, stated:

"...I have consulted the Recruitment Officer in charge of DPI at that time, who assures me that there are no adverse materials, kept in a separate file in our Division regarding your case.

Although I am aware that some Departments and Offices keep skeleton files on external candidates for their internal use, the Recruitment and Placement Officers are instructed not to take them into consideration if the material they contain was not directly submitted by the candidates themselves or has not been shown to them.

¹/Successor to OPS

As to your candidature for the post of Radio Producer in Hindi, I have ascertained from various sources including the Chairperson of the Appointment and Promotion Committee that, at the time when the Committee considered candidates for that post, full and careful consideration was given to your application as collateral. However, another candidate was selected who, in the Committee's opinion, offered qualifications which were more closely related to the requirements of that particular vacancy.

..."

On 28 June 1989, the Applicant wrote to the Secretary-General, reiterating her allegations and stating:

"Judging by the fact that no substantiation has been provided to me that your instructions [to remove any adverse material from personnel files] are in fact being carried out, ... I can only surmise that an administrative decision has been made not to respond to my request for compliance with your instructions and UN rules".

She requested, therefore, that her letter be considered as initiating the appeals process under staff rule 111.2 against non-compliance.

On 26 July 1989, the Applicant lodged an appeal with the Joint Appeals Board (JAB). Initially, the Presiding Officer of the JAB informed the Applicant that her letter "could not be considered a request for review of an administrative decision since she had not been a staff member since 1981." Subsequently, the JAB decided to consider the appeal and adopted its report on 18 June 1991. Its conclusion and recommendation read as follows:

"Conclusion and Recommendation

16. The Panel met in executive session on 9 May 1990 and unanimously decided that the appeal was not receivable. There was no identifiable administrative decision against which an appeal could be lodged, and, in any event, more than seven years had elapsed between the time Appellant had

left the Organization and her attempt to invoke the procedures specified in staff rule 111.2.
17. The Panel recommends that the appeal be rejected."

On 20 June 1991, the Officer-in-Charge, Department of Administration and Management, advised the Applicant that the Secretary-General had re-examined her case in the light of the JAB's report and had decided, in accordance with the JAB's recommendation, to reject her appeal.

On 15 November 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant filed a timely appeal, as the decision appealed was an on-going one, i.e. failure to remove adverse material from her file.

Whereas the Respondent's principal contentions are:

1. The Tribunal is only open to staff and former staff who file appeals relating to alleged violations of their conditions of employment. The Applicant's appeal in reality is complaining that she was not selected for positions since her separation from service. A former staff member complaining about non-selection for positions subsequent to separation from UN service has no standing before the Tribunal.

2. The Tribunal does not have jurisdiction to adjudicate the Applicant's claims relating to the contents of her Official Status file since those claims relate to matters arising subsequent to her separation.

The Tribunal, having deliberated from 21 October to 13 November 1992, now pronounces the following judgement:

I. In the present case, the Applicant challenges a decision of the Secretary-General accepting a unanimous recommendation of the Joint Appeals Board (JAB) that her appeal was not receivable

because there was no identifiable administrative decision against which an appeal could be lodged and that the appeal was, in any event, not timely, because more than seven years had elapsed between the time the Applicant had left the Organization and her attempt to invoke the procedures specified in staff rule 111.2.

II. The Respondent asks the Tribunal to find that it does not have jurisdiction ratione personae since the Applicant is not a staff member and is complaining about events that occurred subsequent to her separation from service. The Respondent bases his argument on article 2, paragraphs 1 and 2, of the Statute of the Tribunal. In the Applicant's view, failure by the Tribunal to consider the merits of this case or to award meaningful compensation would constitute a failure to exercise jurisdiction vested in it, within the meaning of paragraph 1 of article 11 of the Tribunal's Statute. Accordingly, the first question to be determined by the Tribunal is whether it is competent to decide this case in accordance with article 2, paragraph 3 of its Statute.

III. Article 2, paragraphs 1, 2 and 3 of the Statute of the Tribunal provide:

"1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations.

2. The Tribunal shall be open:

(a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;

- (b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

3. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal."

IV. In the light of these provisions the Tribunal must consider whether the Applicant is a person having access to the Tribunal by virtue of paragraph 2. In that respect, the Tribunal notes that the Applicant has not served as a staff member since December 1981. Between 1982 and 1989, she applied, unsuccessfully, as an outside candidate, for a number of positions in DPI.

She claims that she was not selected for any of these positions because of adverse material allegedly contained in her official status file. According to the Applicant "at the heart of this appeal is the fact that UN officials have made decisions not to implement mandatory UN rules concerning Applicant's official status file, and made false statements about her periods of UN employment".

V. The Tribunal notes that the Applicant is a former staff member complaining about her non-selection for a position in the Secretariat. The Tribunal is not competent to judge the manner in which external candidates are considered for posts within the Secretariat. The Tribunal is only open to the staff and former staff who file appeals relating to alleged non-observance of their contracts of employment. In the present case, the Applicant cannot allege the non-observance of a contract of employment because such a contract does not exist.

VI. The Tribunal recalls that, in case of divergent views between an applicant and a respondent concerning its competence, the matter is to be settled by a decision of the Tribunal,

pursuant to article 2, paragraph 3 of the Statute of the Tribunal.

VII. As a result of its examination of the file and in the light of the foregoing considerations, the Tribunal concludes that the application does not fulfil the requirements of article 2, paragraphs 1 and 2 of its Statute.

VIII. For the foregoing reasons, the Tribunal declares itself not competent to consider the application.

IX. In view of this conclusion, the Tribunal cannot entertain the Applicant's claims.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Arnold KEAN
Member

Ioan VOICU
Member

New York, 13 November 1992

R. Maria VICIEN-MILBURN
Executive Secretary