

ADMINISTRATIVE TRIBUNAL

Judgement No. 836

Case No. 743: BENTALEB

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mayer Gabay;

Mr. Julio Barboza;

Whereas on 20 February 1996, Mokhtar Bentaleb, a former staff member of the United Nations, filed an application requesting, on the basis of former article 12 (now article 11) of the Statute of the Tribunal, the revision of Judgement No. 723 rendered by the Tribunal on 21 November 1995;

Whereas the application contained conclusions requesting the Tribunal:

"... to correct the wording of paragraph V of Judgement No. 723 in order to reflect accurately the facts of the situation.

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[to order] a revision of Judgement No. 723 in the light of the new facts now discovered."

Whereas on 19 March 1996, the Respondent asked the Tribunal to dismiss the application for revision submitted by the Applicant, in view of the provisions of a Memorandum of Understanding entered into by the Applicant and the Respondent on 22 February 1996;

Whereas the Memorandum of Understanding of 22 February 1996 sets forth the terms of the Applicant's agreed termination, which took effect on 31 March 1996; Whereas subparagraph (i) of that Memorandum reads as follows:

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"i) In consideration of the foregoing payments, terms and conditions, I do hereby release and forever discharge the United Nations from any and all claims, charges, demands, applications, appeals, payments, damages or causes of action, whether known or unknown, that have arisen or that may arise hereafter from my employment with the United Nations. I hereby further affirm and warrant that I have read and understood this Memorandum of Understanding, that I have a right to seek and obtain legal advice concerning the contents thereof, that I have sought such advice or have waived my right to do so, and that I am freely and voluntarily executing this Memorandum of Understanding."

Whereas on 1 April 1996, the Applicant advised the Tribunal that he did not intend to withdraw his application;

Whereas the facts in the case were set forth in Judgement No. 723;

The Tribunal, having deliberated from 2 July to 1 August 1997, now pronounces the following judgement:

I. By its Judgement No. 723 of 21 November 1995, the Tribunal awarded the Applicant compensation of US\$ 1,000 for procedural irregularities associated with the implementation of an earlier Judgement, No. 539 of 4 November 1991. In his latest application, the Applicant requests that Judgement No. 723 be both corrected and revised. There are thus two distinct requests, both of which refer to former article 12 (now article 11) of the Statute of the Tribunal, which reads as follows:

"The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the

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judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

II. After Judgement No. 723 was pronounced, the Applicant entered into a termination agreement with the Administration. Subparagraph (i) of this agreement contains a waiver by the Applicant of any action against the Administration.

The subparagraph reads as follows:

"i) In consideration of the foregoing payments, terms and conditions, I do hereby release and forever discharge the United Nations from any and all claims, charges, demands, applications, appeals, payments, damages or causes of action, whether known or unknown, that have arisen or that may arise hereafter from my employment with the United Nations. I hereby further affirm and warrant that I have read and understood this Memorandum of Understanding, that I have a right to seek and obtain legal advice concerning the contents thereof, that I have sought such advice or have waived my right to do so, and that I am freely and voluntarily executing this Memorandum of Understanding."

In view of these provisions, the Respondent maintains that the Applicant's requests should be considered null and void and that the application should therefore be dismissed.

III. However, account should be taken of subparagraph (j) of the agreement between the Applicant and the Administration, which reads as follows:

"Nothing in the foregoing shall be deemed in any way or for any purpose to

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be a derogation from the obligation of the United Nations to pay me, Mokhtar Bentaleb, any monetary sums which the United Nations Administrative Tribunal may award or may have awarded to me pursuant to any Judgement concerning my Application to the Administrative Tribunal in its Case Number 743."

These terms might suggest that the Applicant's waiver of any action against the Administration did not cover the potential consequences of Judgement No. 723. The Tribunal will therefore examine the Applicant's requests.

IV. The passage in Judgement No. 723 whose correction the Applicant is requesting is the second subparagraph of paragraph V, which reads as follows:

"The Respondent claims that the delay in completing the Applicant's PER [covering his service during the period 1 July 1987 to 31 December 1990] was partly his own fault, as he, for some time, refused to sign it. This could account for the period from July 1992, when the PER was completed, to October 1992, when it was finally signed by the Applicant."

The Applicant maintains that this passage does not accurately reflect the date on which he received and signed his PER for the period 1 February 1987 to 31 December 1990. It turns out that the paragraph in question sets forth the Respondent's argument and its refutation by the Tribunal, which held the Administration responsible for a delay of 18 months in completing the Applicant's PER. Accordingly, the Tribunal's Judgement is not inaccurate and does not require correction, and it is inappropriate for the Applicant, who largely won his case, to complain about it.

V. Turning to the Applicant's request for revision, it should be noted that it is based on two statutory documents of which he claims to have had no knowledge

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at the time. The first is a memorandum dated 9 November 1995, concerning post reductions by 31 December 1995, addressed to all heads of departments and offices by the Under-Secretary-General for Administration and Management. The second is a memorandum dated 22 November 1995 from the Assistant Secretary-General for Human Resources Management concerning performance evaluation reporting.

The Tribunal considers these documents to be extraneous to the issue, resolved by Judgement No. 723, of the implementation of the earlier Judgement No. 539 and that they cannot be regarded as new facts within the meaning of former article 12 (now article 11) of the Statute of the Tribunal.

VI. The application is hereby dismissed in regard to both the correction and the revision of Judgement No. 723.

(Signatures)

Hubert THIERRY
President

Mayer GABAY
Member

Julio BARBOZA
Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Executive Secretary

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