
ADMINISTRATIVE TRIBUNAL

Judgement No. 844

Case No. 951: SIKKA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mayer Gabay;
Ms. Deborah Taylor Ashford;

Whereas at the request of Primla Sikka, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended until 30 November 1996 the time-limit for the filing of an application with the Tribunal;

Whereas, on 25 October 1996, the Applicant filed an application requesting the Tribunal, inter alia:

"[to produce certain documents and]:

...

- (c) To adjudge and declare that administrative decisions by the ITC [International Trade Centre] Administration and the harassment due to personal prejudice of ITC supervisors have caused the Applicant severe health damage, high medical costs and prejudice to her career, as well as severe and prolonged financial, mental and moral stress;
- (d) To adjudge and declare that unethical conduct, hostile treatment and misdiagnosing by one medical doctor of the UN Joint Medical Service (JMS) have contributed to the Applicant's health problems, additional medical costs and prejudice to her career, as well as severe mental and moral stress;

- (e) To adjudge and declare that the more than five-year delay between the Applicant's appeal to the Joint Appeals Board (8 February 1991) and the Secretary-General's decision taken on the basis of the report of the Joint Appeals Board (26 June 1996), amounts to a denial of justice by the UN;
- (f) To order payment of \$100,000 as compensation for the prejudice to the Applicant's career and for the physical and moral damage caused by the ITC's mismanagement and harassment by ITC supervisors, as well as by the unethical conduct by a JMS medical doctor, and its moral and financial consequences on the Applicant's professional career and expectations, and as compensation for the five year delay in obtaining a hearing by the Joint Appeals Board;
- (g) To order the promotion of the Applicant to grade G.6 retroactively to 1 January 1982 until 31 December 1989, in substitution of the special post allowance granted as from 1 November 1982;
- (h) To order payment of salary for 82 1/2 days of annual leave abusively deducted in lieu of sick leave in the period April 1986 to April 1988;
- (i) To order that the Performance Evaluation Reports for the period 1 January 1985 to 16 December 1986 be declared null and void;
- (j) To order reimbursement of all legal costs incurred in relation [to] the present complaint."

Whereas the Respondent filed his answer on 29 September 1997;

Whereas, on 21 October 1997, the Applicant filed written observations;

Whereas, on 11 November 1997, the Tribunal requested the Respondent to provide it with certain information, which the Respondent did, on 13 and 14 November 1997;

Whereas the facts in the case are as follows:

The Applicant entered the service of the International Trade Centre (ITC) on 16 June 1975, as a Typist, at the G-2 level, under a short term appointment. Her contract was renewed on 15 August 1975,

when she was appointed as a Shorthand-typist, at the G-3 level. On 1 January 1976, the Applicant's functional title was changed to Secretary, and she was promoted to the G-4 level. With effect from 1 July 1976, she obtained a fixed-term contract. On 1 January 1981, the Applicant was promoted to the G-5 level. On 1 July 1988, her title was changed to Programme Assistant. With effect from 1 January 1990, she was promoted to the G-6 level. On 1 January 1991, she was given a permanent appointment. From 16 October 1992 through 31 January 1994, the Applicant was assigned on mission with the United Nations Protection Force.

With effect from 1 January 1982, the Applicant while serving at the G-5 level, was transferred to a G-6 post, as Research Assistant with the Special Programme for Export Packaging (SPEP), Division of Interregional Programmes (DIP). The Applicant was granted a special post allowance to the G-6 level on 1 November 1982.

Following organizational changes in ITC, SPEP became the Functional Advisory Services Section (FASS), DIP's title was changed to Division of Specialized Services (DSS), and new directors were appointed.

In February 1985, the Appointment and Promotion Committee (APC) met for the 1984 end of year review. It appears that, despite the fact that the Applicant was on the seniority list for promotion to the G-6 level and for the granting of a permanent contract, her case was not considered. The reason was that the Director, DSS, had sent, on 19 February 1985, a performance evaluation report (PER) on the Applicant's performance from 1 June 1983 to 31 December 1984, with an overall rating that her performance did not fully meet standards. The PER's overall rating was then upgraded to "Fair" and the Applicant received a copy of it on 25 February 1985. The Applicant instituted a rebuttal against both versions of the PER on 1 April 1985.

On 23 August 1985, the Executive Director, ITC, endorsed the Rebuttal Panel's report on the PERs and the Applicant's overall performance rating was upgraded to "a good performance". The new PER and all relevant documentation were inserted in the Applicant's Official Status file in July 1987, after repeated requests from the Applicant. She was given a copy of the rebuttal report only on 24 May 1988. The Applicant also noted that there was a reference in the Panel's report to a memorandum dated 5 June 1985 from the Chief, FASS, concerning her transfer to another division, which she had never seen.

In the meantime, the Applicant's office had been moved into a storeroom. The Applicant had previously had to undergo two emergency hospitalizations in 1984 when she worked there, due to her allergy to dust. In June 1985, while the Applicant was on certified sick-leave, a doctor from the United Nations Joint Medical Service (UNJMS) called her in order to obtain the name of her private physician. The UNJMS called the Applicant's physician and allegedly informed him that if he did not immediately certify the Applicant as fit for work, her contract would be terminated. Consequently, the Applicant's physician certified her fit for work half-days, on a trial basis. The Applicant claimed that in July 1985, the same doctor from the UNJMS called her at work and told her that she should return to work full-time and that she needed psychiatric treatment as she was a hypochondriac. The UNJMS then contacted the Applicant's physician to certify that the Applicant was fit to work full-time but he apparently refused to do so.

In August 1985, the Applicant complained to the Director, Division of Personnel Management, ITC, about the attitude of the UNJMS doctor and the fact that no one had come to inspect her office as requested. On 15 October 1985, the Applicant sent a memorandum to another doctor of the UNJMS, requesting an inspection of her office. On 19 October 1985, two doctors inspected the office. They forwarded their report to ITC on 4 November 1985. On 13 November 1985, the Applicant wrote to the Executive Director, ITC, requesting

that he take the action recommended by the report. In March 1986, she was moved into another office. On 5 March 1986, the Senior Export Packaging Adviser informed the Applicant that, due to her health, she would be relieved of her duties and put on an assignment basis.

At the end of March 1986, the Applicant was on sick-leave. She resumed her duties on a part-time basis on 1 April 1986. The Applicant had two consultations with a psychiatrist who concluded that she had no problems. On 31 July 1986, the UNJMS informed the Applicant that following the conclusions of both experts, she had to resume full-time work as of 4 August 1986.

On 11 June 1987, the Applicant wrote to the Executive Director, ITC, raising a number of issues, among them documentation she had not seen and discrepancies in her leave records, especially since 1983. In a reply dated 22 July 1987, the Chief, Staff Administration Section, informed the Applicant, inter alia, that the memorandum dated 6 August 1986 from the UNJMS had been placed in her Official Status File; that they had not received any communication pertaining to her sick-leave from 1 April to 4 August 1986; that the 18 days of sick-leave resulting from her accident in 1983 would be credited to her record, once ITC received the Advisory Board on Compensation Claim's opinion on the matter; and that they had never received a memorandum dated 5 June 1985 concerning her transfer.

On 14 December 1987, the Applicant was given her PER for the period 17 December 1986 through 15 October 1987, which gave her an overall rating of a "good performance". However, during the APC meeting on 15 December 1987, the Director, Division of Product and Market Development (DPMD) apparently gave a different verbal opinion of her performance. This is evidenced by a memorandum dated 28 January 1988 from the Executive Director, ITC, requesting that the Director, DPMD, provide the APC an overall assessment on the Applicant's performance through a memorandum that would be copied to her. On 16 December 1987, the Chief, Personnel Administration Section (PAS), presented the Applicant with a P-5

Action Form from DPMD terminating her assignment. On 18 December 1987, the Applicant was hospitalized for cardiac problems and remained on sick-leave until February 1988.

On 15 June 1988, the PER covering the period 1 January 1985 through 16 December 1986 was presented to the Applicant, giving her an overall rating of "unsatisfactory". On 14 July 1988, the Applicant instituted a rebuttal against the PER. The Panel adopted its report on 26 October 1988 and decided that the rating should stand.

On 23 June 1988, the Applicant was informed by the Chief, SAS/DPFP, that the Chief, Market Development Service - Manufactured Products and the Director, DPMD, had not recommended the renewal of her contract beyond its expiry date, i.e. 30 June 1988. However, the Chief, SAS/DPFP, informed her that her contract would be renewed for 18 months and she would be transferred as of 1 July 1988 to the Office of the Executive Director, ITC.

On 2 November 1988, the Applicant was presented with the PER covering the period 17 December 1987 through 30 June 1988, which gave her an overall rating of "a performance that did not fully meet standards". The Applicant instituted a rebuttal on 1 December 1988.

The Panel adopted its report on 25 April 1989, recommending that the PER be deleted from the Applicant's file.

By a memorandum dated 19 March 1990, from the Head, Regular Staff Unit, PAS, the Applicant was requested to sign her agreement to revised leave and absence records for 1986. The Applicant received an audit report on 26 February 1990, which led her to send a memorandum to the Executive Director, ITC, on 6 April 1990. In May 1990, she was reimbursed 13 days of salary as recommended in the audit report.

On 11 April and 15 May 1990, the Applicant wrote to the Chief, PAS, requesting that ITC provide her with comments on the auditors' observations on her annual leave for the years 1975 and 1976. She further stated that if no action was taken to correct the errors, she would exercise her right of appeal.

On 20 June 1990, the Applicant wrote to the Secretary-General requesting an administrative review of three administrative decisions: the refusal to provide her a copy of a memorandum dated 17 March 1986 sent by ITC to the UNJMS; the refusal to provide her with a copy of a memorandum dated 5 June 1985 from the Chief, FASS, to the Director, DPM; and the decision to block the correction of her leave records as per the audit Observation 89-23, dated 13 October 1989.

On 8 October 1990, the Applicant lodged an appeal with the Geneva Joint Appeals Board (JAB). The JAB adopted its report on 15 April 1996. Its findings and conclusions and recommendations read as follows:

"Conclusions and recommendations

50. Regarding the non-transmission of copies of the first memorandum dated 5 June 1985 from the Chief, FASS/DSS, to the Director, DPM, and of the second memorandum dated 17 March 1986 from the ITC to the Joint Medical Service, the Panel concluded that, although the Appellant was not provided with copies of the two memoranda, she was regularly promoted and was offered a permanent appointment as of 1 January 1991, hence she did not suffer any prejudice to her career.

51. Considering the leave records, the Panel concluded that the ITC Administration did not keep in a proper and efficient manner those records and that therefore the ITC should bear the consequences of its negligence. The only way in order to determine precisely what is owed to the staff member would be a new audit, but the Panel believes that the actual damage is not worth such expenditures.

52. Consequently, the Panel recommends that the Appellant be given the benefit of the doubt regarding her annual leave and be credited with the 9 days of annual leave she claims."

On 26 June 1996, after reviewing the JAB report, the Secretary-General made the following decision:

"The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Panel's conclusion that, although you were not provided with copies of two specific memoranda, you did not suffer any prejudice to your career, as you were regularly promoted and were offered a permanent appointment as of 1 January 1991. The Secretary-General has accordingly decided to take no action in respect of this issue.

The Secretary-General has further taken note of the Panel's conclusion regarding your leave records and has decided to accept the Panel's recommendation that you be given the benefit of the doubt in respect thereof. Accordingly, he has decided that you be credited with the 9 days of annual leave you claim".

On 25 October 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The administrative decisions taken in the Applicant's case, and a misdiagnosis by the Joint Medical Service, caused her harm, as did delays in the handling of her case.
2. As a result, the Applicant is entitled to compensation, reimbursement of legal fees and retroactive promotion, as well as payment for eighty-two and one half days of annual leave, and a declaration that her PERs for 1985 and 1986 be considered null and void.

Whereas the Respondent's principal contentions are:

1. Any delay which occurred was not of such a nature as to constitute denial of justice or to entitle the Applicant to compensation.
2. The Applicant has not demonstrated exceptional reasons to justify the award of legal costs to the Applicant.

The Tribunal, having deliberated from 10 to 25 November 1997, now pronounces the following judgement:

I. The Applicant makes numerous claims for relief for actions and inaction by the Respondent that have prejudiced her career. Specifically, the Applicant requests that a decision by the Secretary-General accepting the recommendations of the Joint Appeals Board (JAB) be reversed; that certain documents be produced; and that she be compensated for harm suffered as a result of the Respondent's failure to produce those documents. In addition, the Applicant asserts that she has been a victim of harassment, arising from her supervisors' prejudice against her, which has caused her health to deteriorate. Furthermore, she contends that misdiagnosis by the UN Joint Medical Services contributed to her career problems. Moreover, leave records were not properly kept by the International Trade Centre (ITC). To remedy the results of these improper actions by the Respondent, the Applicant requests that she be paid for improperly deducted annual leave, be promoted retroactively, and that certain personnel evaluation reports (PERs) be declared null and void.

II. The Tribunal notes that, in the course of these proceedings, the Applicant has received all of the documents requested, with the exception of one memorandum of 1985 which apparently has been lost.

On 26 June 1996, the Under-Secretary-General for Administration and Management wrote to the Applicant informing her that "although you were not provided with copies of two specific memoranda, you did not suffer any prejudice to your career, as you were regularly promoted and were offered a permanent appointment as of 1 January 1991." The Tribunal agrees with the Secretary-General's conclusion.

III. The JAB's report to the Secretary-General is an extensive analysis of the tortured record of the Applicant's service at the ITC. That record reflects that for a number of years the Applicant

received "good", "adequate performance" or "very good" evaluations and was promoted regularly. Beginning in 1981, the Applicant's poor health caused her to be absent from work frequently and to work irregular hours, with the result that supervisors noted her inability to perform the tasks necessary in the busy department. The Applicant asserts that the supervisors "harassed" her due to personal prejudice, which caused her health to fail. The Applicant alleges, further, that one doctor of the Joint Medical Service misdiagnosed her illness and acted unethically and with hostility. Neither of these claims has been brought before the JAB or other review body, and therefore neither is receivable by the Tribunal.

IV. The Applicant also requests promotion retroactively in substitution for a special post allowance granted from 1 November 1982 until 31 December 1989, and payment for annual leave from April 1986 to April 1988 that was "abusively" deducted. The Tribunal finds that both of these claims are time-barred, as the Applicant knew or had reason to know that the claims existed at the time of her letters of appeal to the JAB on 8 October 1990 and 8 February 1991, in which she challenged certain other leave issues. The JAB was not asked to consider the annual leave issue presented in this application but did review another annual leave question. The JAB recommended that the expense of an audit was not warranted, and the Secretary-General granted to the Applicant the 9 day leave adjustment requested. In her application, the Applicant asserts that 82 1/2 days of annual leave during a 2 year period should have been charged against sick leave. The Tribunal notes that the record reflects that in the five years prior to the period in question, the Applicant had been absent from work due to illness for periods ranging between 19 and 46 per cent of the total work days in each year. The Tribunal is of the view that the Applicant was fully aware of the applicable rules relevant to accumulation of sick and annual leave, and consequently, should have made any such claims in the 1991 appeal to the JAB.

V. The Applicant also requests that PERs for the period 1 July 1985 to 16 December 1986 be declared null and void. The Tribunal consistently has taken the position that it does not interfere in the PER process unless there is evidence of prejudice. The Tribunal has examined the Applicant's PER rebuttal and the Rebuttal Panel's report and finds that there is no evidence of prejudice with respect to the PERs in question.

VI. Finally, the Applicant requests the Tribunal to find that the five-year delay between her appeal to the JAB and the Secretary-General's decision amounts to a denial of justice.

The Respondent has provided no explanation for the approximately five-year delay other than his limitations regarding staff resources and unusual difficulties in constituting review panels. These explanations, however well founded, do not justify such a delay in dealing with a recommendation by the JAB. (Cf. Judgements No. 414, Apete (1988) and No. 324, Riddler (1984)). The Tribunal does not agree with the Applicant's contention that this delay has caused injury to her career, as she has been promoted and awarded a permanent appointment during the period in question. However, the Tribunal finds that the Applicant should be compensated for the unjustified and unreasonable delay of five years in dealing with the claim.

VII. For the foregoing reasons, the Tribunal:

- (a) Rejects the claims relating to harassment and to the Joint Medical Service as not being receivable by the Tribunal;
- (b) Rejects the Applicant's claims relating to promotion and restoration of annual leave as time-barred;

(c) Orders the Respondent to pay the Applicant compensation in the amount of US\$3,000 for the delay in handling her claim; and

(d) Rejects the remainder of her claims in their entirety.

(Signatures)

Hubert THIERRY
President

Mayer GABAY
Member

Deborah Taylor ASHFORD
Member

New York, 25 November 1997

R. Maria VICIEN-MILBURN
Executive Secretary