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ADMINISTRATIVE TRIBUNAL

Judgement No. 860

Case No. 942: KHREIS

Against: The Commissioner-General  
of the United Nations  
Relief and Works Agency  
for Palestine Refugees  
in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Ms. Deborah Taylor  
Ashford; Mr. Julio Barboza;

Whereas, on 10 September 1996, Oussama Khreis, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA or the Agency, filed an application, with pleas which read, in part, as follows:

- "a) To rescind the administrative decision of 20 December 1994 ..., concerning the reduction of his Provident Fund benefits by an amount of US\$16,915.18 (United States dollars sixteen thousand, nine hundred fifteen and 18/100) (...) and to order the Commissioner-General of UNRWA to pay him that amount within two weeks of the judgement by the Tribunal;
- b) To order the Commissioner-General of UNRWA to pay the Applicant interest on the above amount as of the date of his separation from UNRWA, i.e. 12 September 1994, until the date of payment of that amount, the interest to correspond to the percentage of profits of the UNRWA Provident Fund for that period or 12%, whichever is higher;

- c) To order the Commissioner-General of UNRWA to pay the Applicant an amount of US\$3,000 as damages in compensation for the breach of the Administration's obligation to adhere to the binding time limits in submitting its written statement in reply to an appeal to the Joint Appeals Board (...);
- d) To order the Commissioner-General of UNRWA to pay the Applicant an amount of US\$3,000 in damages for widely circulating the Administration's confidential reply to his appeal (...); the so-called 'Summary of Facts' in that reply is heavily biased in favour of the Administration. Moreover, its circulation at that time must be seen as an attempt to influence the considerations of the Joint Appeals Board of the Applicant's case and to unduly interfere with the proceedings of the Board;
- e) To order the Commissioner-General of UNRWA to pay the Applicant an amount to be fixed by the Tribunal, for discrimination, as there have been a number of other UNRWA staff members who had received an installation grant, although it was known to the Administration that such staff would return, after separation, to Vienna;
- f) To order the Commissioner-General of UNRWA to pay the Applicant damages in the amount of US\$20,000 for charging him as having-with intent- misled the Administration as to his true intentions regarding his future employment with UNOV so as to obtain payment of the installation grant ...
- g) ...
- h) Award the Applicant costs totaling US\$8,500 (...)"

Whereas the Respondent filed his answer on 15 December 1996;  
Whereas the Applicant filed written observations on  
28 January 1997;

Whereas, on 6 March 1997, the Respondent submitted comments  
on the Applicant's written observations;

Whereas, on 8 April 1997, the Respondent submitted additional

written observations;

Whereas, on 11 November 1997, the Tribunal requested the Applicant's counsel to provide it with certain information, which he did, on 14 November 1997;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Agency at the grade 13, step I level, on 13 January 1989, as a Data Processing Officer, in the Finance Department of the Lebanon Field Office Headquarters.

On 22 May 1991, the Chief, Personnel Services Division, informed the Applicant that he had been selected to participate in the Agency's Rotation Program, on a two-year, fixed-term assignment to UNRWA Headquarters, Vienna. The Applicant was advised that he would hold the post of Assistant Training Officer (PC [Personal Computer] Applications). On 28 May 1991, the Applicant accepted this assignment.

On 1 April 1993, the Chief, Personnel Services Division, informed the Applicant that his assignment in Vienna had been extended until 12 August 1994, at which time he would return to his former post in the Lebanon Field Office. On 9 March 1994, the Assistant Personnel Officer (Area) wrote to the Applicant, confirming that, with effect from 13 August 1994, the Applicant would return to his former post as Data Processing Officer at the Lebanon Field Office. The letter stipulated that:

"You will be entitled to an installation grant equivalent to 30 days of travel subsistence allowance applicable at the time of your arrival in Beirut, and one half that amount in respect of each accompanying recognized dependant."

On 28 July 1994, the Officer-in-Charge, Personnel

Services, UNOV, wrote to the Applicant, offering him the post of Computer Systems Assistant, Electronic Support Service, for a fixed-term of two years. In a reply dated 29 July 1994, the Applicant

accepted the offer of appointment in Vienna, and stated that he would be able to report for service on 5 September 1994.

The Applicant reported for work at the Lebanon Field Office on 13 August 1994 and, on 18 August 1994, was paid the installation grant in the amount of 28,417,500 Lebanese Pounds - equivalent at that time to US\$16,915.18 - in respect of himself, his wife and their two children. On the same day, the Applicant applied for 16 working days of Annual Leave, which request was granted on 21 August 1994. By a letter also dated 18 August 1994, to the Field Administration Officer, the Applicant requested a twelve month special leave without pay in order to take up his appointment in Vienna. In a reply dated 2 September 1994, the Field Personnel Officer denied the Applicant's request.

On 6 September 1994, the Applicant sent a telex to the Lebanon Field Office from UNRWA Headquarters in Vienna, resigning as of 13 September 1994 and requesting that all his entitlements be sent to Vienna. On 13 September 1994, the Applicant wrote to the Chief, Accounts Division in Lebanon, requesting deferral of the payment of his Provident Fund benefits until "further notice". On 14 September 1994, the Applicant began his service in UNOV.

On 19 December 1994, the Applicant was paid the amount of US\$22,645.91, which was the credit balance in the Provident Fund after the deduction of US\$16,915.18 representing the installation grant.

On 20 December 1994, the Officer-in-Charge, Department of Administration and Human Resources, wrote to the Applicant, informing him that he was indebted to the Agency in an amount equivalent to the installation grant as he had accepted payment of the grant "with full knowledge that you did not intend to continue as an Agency staff member and fulfil your contractual obligations, since you had already been offered and accepted alternative

employment."

In a reply dated 13 January 1995, the Applicant requested a review of this decision. On 2 February 1995, the Director of Administration and Human Resources advised the Applicant that the decision would be maintained since "[the Applicant's] actions placed [him] in breach of [his] contractual obligations."

On 3 March 1995, the Applicant lodged an appeal with the Area Staff Joint Appeals Board (AJAB). The AJAB adopted its report in June 1996. Its evaluation, judgement and recommendation read as follows:

"III. EVALUATION AND JUDGEMENT

...

a. The Board believes that the purpose of the Rotation Programme is to provide an opportunity for staff members in the area of operations to gain experience at Headquarters which will eventually benefit the Field when the staff member completes his assignment at Headquarters and returns to his post in the area of operations. While the Board is of the opinion that in order to convey this experience, the Appellant may be required to serve for a certain period of time with the Agency, however, the Board noted that the rules do not specify the exact period of time which the staff member has to serve in the area of operations upon completion of the assignment in Headquarters.

b. The Board referred to the letter of the Chief, Personnel Services Division dated 22 May 1991, whereby the Appellant was assigned to Headquarters, Vienna, and noted that it requires the staff member (the Appellant) to undertake to return to his former post in the area of operations upon completion of the fixed-term assignment without specifying a particular period of time for the Appellant to serve in the area of operations.

c. The Board noted the letter of the Personnel Officer (Area) dated 4 March 1994, whereby the Appellant was informed, inter alia, that:

(i) his participation in the Rotation Programme will come to an end on 12 August 1994,





(ii) he will return to his former post at Lebanon Field Office with effect from 13 August 1994, 'your appointment will be governed by the Area Staff Rules and Regulations together with other applicable Agency directives, circulars, etc. The Annex to the Area Staff Rules applicable to Area staff members serving in Vienna will no longer apply to you', and that

iii) he will be entitled to an installation grant equivalent to 30 days of the travel subsistence allowance applicable at the time of his arrival in Beirut, and one half of that amount in respect of each accompanying recognized dependent.

**The said letter did not provide for any specific period of time during which the Appellant would be required to serve in Lebanon Field, nor did it include any condition for payment of [the] installation grant.**

d. In the Administration's submission to the Board dated 25 July 1995, the Board noted several references to '**a period of sufficient duration**' during which the Appellant is required to serve in the area of operations upon completion of the Rotation Programme; however, this submission is not supported by any Agency rule, regulation or directive. Furthermore, the term 'sufficient' cannot be used as a basis of commitment on the part of the Appellant; only a moral one, if any.

e. The Board also took note of the routing slip submitted by the Administration (...) as evidence that the Appellant was offered and accepted employment with the United Nations Office at Vienna prior to his return to Lebanon Field. This routing slip is neither signed nor includes any official reference to its source. Therefore, the Board concluded that it cannot be considered as acceptable evidence.

f. The Board noted that the only provision for [payment of the] installation grant is that of Rule 19 of the Annex to the Area Staff Rules applicable to Area staff members whose duty station is Vienna, which states in paragraph 1 ... that:

'Upon arrival at the Headquarters duty station the staff member shall be paid, ... an installation grant, as follows, **provided the staff member's service at the Headquarters duty station is expected to be of at least**

one year's duration ...'

On 12 May 1996, the Board raised inquiries to The Legal Adviser about the interpretation of paragraph 1 of Rule 19 above.

On 15 May 1996, The Legal Adviser replied that 'the Annex only applies to Vienna staff and is, therefore, not applicable in this particular case'.

g. The Appellant's resignation, which was tendered on 6 September 1994 with effect from 13 September 1994, was accepted unconditionally by the Administration and obviously waiv[ed] the notice period provided for in the Appellant's letter of appointment. **The Board here believes that the Appellant's attention should have been drawn to the fact that the installation grant paid to him would be reimbursed if he resigned at this time.**

#### IV. RECOMMENDATION

17. In view of the foregoing, the Board unanimously makes its recommendation that the administrative decision appealed against be reviewed, and that the Appellant be paid the amount withheld from his Provident Fund benefits."

On 24 June 1996, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"I enclose a copy of the International Staff Joint Appeals Board's report addressing your appeal against the Administration's decision to deduct the amount of the Installation Grant, paid to you upon your transfer to Lebanon, from your Provident Fund benefits.

You will see that the Board noted that the Administration did not specify a period of time that you should spend in Lebanon after reassignment and that you were not advised of the adverse financial consequences of your resignation. The Board therefore recommended that the Administration's decision to withhold payment of a portion of your Provident Fund benefits be reviewed and that you be paid the amount outstanding.

I do not agree with the Board's decision as it overlooks the implicit requirement of good faith between an employer and its employees. By your silence regarding the position

with UNOV, which you accepted prior to your reassignment to the Lebanon Field Office, you misled the Agency as to your true intentions and acted with the sole aim of securing the Installation Grant without remaining in Lebanon for more than a token period of time. Accordingly, I have decided not to accept the Board's conclusions and recommendations; your appeal is, therefore, dismissed.

..."

On 10 September 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant is entitled to payment of the installation grant since the Agency's obligation to pay such grant was conditional only upon the Applicant returning to his duty station in Lebanon. Therefore, the Respondent is not entitled to recovery of the installation grant.

2. The Respondent knew at all relevant times of the Applicant's intention to accept employment in Vienna and paid him the installation grant notwithstanding. The Applicant did not deceive the Respondent at any time.

Whereas the Respondent's principal contentions are:

1. The Respondent appropriately recovered the installation grant from the Applicant, since the period of the Applicant's service at his duty station in Lebanon was of so short a time as to frustrate the purpose of payment of the installation grant under area staff rule 107.9.

2. The Applicant's sole motivation in travelling to Lebanon with his family was to collect the installation grant. He had no intention of staying in Lebanon beyond a token period and thus acted in bad faith. Because of the Applicant's deception, the Agency is

entitled to restitution of the installation grant.

The Tribunal, having deliberated from 10 to 26 November 1997, now pronounces the following judgement:

I. This case presents the Tribunal with two main questions. First, the Tribunal must decide whether, under the particular circumstances of his case, the Applicant was entitled to payment of the installation grant. Receipt of an entitlement that is not due to a staff member results in that staff member's indebtedness to the Agency. Second, if the Tribunal finds that the Applicant was not so entitled, it must then determine whether his indebtedness to the Agency could legally be offset by the Agency's retention of part of the Applicant's benefits from the Provident Fund.

II. As to the first question, the Tribunal finds that the determination of the Applicant's entitlement to the installation grant rests on whether he was under an obligation to return to his post in Lebanon and remain there for a certain length of time after the completion of his period in Vienna under the Rotation Programme.

The Tribunal first considered the terms of the Applicant's contract with the Agency, in which the Applicant was informed of his selection to participate in the Rotation Programme. On 28 May 1991, the Applicant signed the contract, which provided that: "... upon completion of this assignment [to Vienna] you will be expected to return to your post of Data Processing Officer in Lebanon."

The rationale behind requiring staff members to return to their posts was also clearly explained in the contract:

"The new Rotation Programme is designed to..provide an opportunity for experienced senior staff in the area of

operations to gain headquarters experience which will benefit the field when the staff member completes his two-year assignment at headquarters and returns to his post in the area of operations."

The Tribunal finds that the terms on which the Applicant assumed his duties in Vienna were quite clear; there can be no doubt that he was expected to return to his former post at the completion of his assignment.

III. Having determined that the Applicant was obliged by his contract to return to his post in Lebanon, the Tribunal considered whether he was under an obligation to remain there for a specific period of time. The Tribunal notes that the Applicant returned to Lebanon using airline tickets that were paid for by the Agency and stayed there only a few days. Meanwhile, he had secured another post with the United Nations Office in Vienna (UNOV). The Tribunal finds no rule imposing on the Applicant a fixed period of residence in Lebanon that would definitively have fulfilled the terms of the Rotation Programme, but instead notes that the determination of this issue is necessarily made on a case by case basis, by the application of the reasonableness standard. Under this analysis, the staff member must stay for a period sufficiently long to accomplish the purposes of the Rotation Programme. In the Applicant's case, the Tribunal finds that he was obliged to remain in Lebanon long enough so that his experience gained at Headquarters, in Vienna, could benefit field operations in Lebanon.

The Tribunal will not enter into a determination of what period of time would have been sufficient to effectuate these purposes, but it is obvious that, by any standard, a period of only a few days is insufficient.

IV. The Tribunal finds that the Applicant, by signing his contract with the Agency, must have been fully aware of his obligation to return to Lebanon. The Applicant cannot have ignored that the purpose of the installation grant was to compensate him for

expenses incurred in his reinstallation in Lebanon, not for the



continuation of his stay in Vienna. Compensating the Applicant for expenses he did not incur as a result of reintegration in Lebanon would thwart the purposes of the installation grant. In the light of this fact, it is clear to the Tribunal that the Applicant's actions were not taken in good faith. The Tribunal finds that the Applicant did not honour the terms of his contract with the Agency and that he was not entitled to be paid the installation grant.

V. The Applicant contends that the Agency knew that he had applied for a post in Vienna and paid him the grant nonetheless. The Respondent asserts that the Agency knew that the Applicant had applied for a post, but was unaware that an offer had been made by UNOV and accepted by the Applicant. The Tribunal finds the overriding consideration to be the Applicant's lack of good faith in collecting the installation grant. The fact that the Applicant did not return the installation grant to the Agency when he accepted the post at UNOV is evidence of his lack of good faith.

VI. As to the second question, the Tribunal finds that the Applicant was indebted to the Agency before the Agency ordered retention of part of his benefits from the Provident Fund. Accordingly, the Tribunal is of the view that the Agency's retention of part of the Applicant's Provident Fund benefits caused him no harm, since the Applicant already owed the Agency the amount of the installation grant. Consequently, it is not necessary for the Tribunal to address the Applicant's arguments concerning the Agency's retention of the Applicant's benefits under the applicable area staff rules.

VII. For the foregoing reasons, the Tribunal rejects the application in its entirety, including the Applicant's request for costs.

(Signatures)

Hubert THIERRY  
President

Deborah Taylor ASHFORD  
Member

Julio BARBOZA  
Member

New York, 26 November 1997

R. Maria VICIEN-MILBURN  
Executive Secretary