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ADMINISTRATIVE TRIBUNAL

Judgement No. 881

Case No. 852: ZÉGHOUANI

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Hubert Thierry, President; Mr. Julio Barboza; Mr. Victor  
Yenyi Olungu;

Whereas, on 30 June 1997, Micheline Zéghouani, a former staff member of the  
United Nations, filed an application requesting the Tribunal, in accordance with  
article 12 of its Statute, to correct alleged errors in Judgement No. 748  
rendered by the Tribunal on 15 July 1996;

Whereas the application contained pleas requesting the Tribunal:

"(a) To correct Judgement No. 748, insofar as that judgement indicates that  
the repatriation grant due to the Applicant had been paid as of the date of  
the judgement, whereas the payment had not been made as of that date;  
"(b) To order the payment of interest on the sums due for the repatriation  
grant, at the rate established by the Tribunal, between the date of her  
separation from service (30 June 1994) or, at the very least, the date on  
which the decision was taken to pay the repatriation grant in all cases  
similar to hers (26 April 1995), and the date on which payment was actually  
made (22 January 1997)."

Whereas the Respondent filed his answer on 19 August 1997;

Whereas the Applicant filed an additional written statement on  
30 August 1997;

Whereas the facts in the case are set out in Judgement No. 748;

Whereas the Applicant's principal contentions are:

1. The Tribunal should correct the clerical error it made in noting that the repatriation grant due to the Applicant had been paid, whereas it had not been paid as of the date of the Tribunal's decision. The Tribunal should therefore amend the portion of the judgement which indicates that such repatriation grant had been paid.

2. Because of this error, the Tribunal rejected the Applicant's request for interest on the sums due to her. The Tribunal should amend the judgement and order that she be paid the interest.

Whereas the Respondent's principal contentions are:

1. The Respondent concedes that the judgement may be amended to state that the repatriation grant had not been paid as of the date of the judgement.

2. The failure to pay the repatriation grant was merely an administrative error to which the Applicant contributed. While the Respondent stated in his answer to the Tribunal that the repatriation grant would be paid shortly, the Applicant did not inform the Respondent that she had not yet received it.

The Tribunal, having deliberated from 3 July to 4 August 1998, now pronounces the following judgement:

I. Upon the expiry of her contract of employment, the Applicant, a former staff member of the United Nations Office at Geneva, asserted her right to the repatriation grant which the Secretary-General had granted to her as a result of Judgement No. 656, but which had not been paid. She therefore filed an application against the Secretary-General. In its Judgement No. 748 dated 15 July 1996, the Tribunal rejected the applications on the ground that the Respondent had already paid the grant claimed, whereas on the date of the judgement the Respondent had not yet acquitted himself of his obligation vis-à-vis the Applicant.

By means of the present action, the Applicant requests the Tribunal to correct this clerical error and applies for payment of the interest accrued on the sum due as of 26 April 1995 and paid two years later, on 21 January 1997.

II. The Tribunal notes that under article 12 of its Statute, 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. It refers, moreover, to paragraph VII.3 of its Judgement No. 564 (Lavalle), rendered on 2 July 1992, in stressing that "... in principle, only if a clerical or arithmetical mistake or an error arising from any accidental slip or omission affects the Applicant's rights under a judgement, would the Tribunal ordinarily be constrained to grant an application for correction."

III. The Tribunal observes that in the present case it relied on one of the Respondent's conclusions, namely, that the Applicant's plea for payment of the repatriation grant was "no longer an issue" because of the Secretary-General's decision to pay her the grant. The Applicant had, however, pointed out, that she had not yet received the payment to which the Secretary-General's decision referred. When the Tribunal pronounced judgement seven months later, it had every reason to believe that payment had been made, albeit belatedly. Nevertheless, it was not until six months after Judgement No. 748 had been rendered that the Applicant actually received her grant. The Tribunal's assertion as to payment having been made prior to the judgement is therefore an involuntary error which should be corrected by stating that the repatriation grant, while granted to the Applicant, had not yet been paid at the time of the judgement.

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IV. The Tribunal also notes that this error in Judgement No. 748 led it to reject the Applicant's request concerning the payment of accrued interest.

V. With regard to the aforesaid interest, the Tribunal does not espouse the argument of the Respondent, who, while recognizing the existence of an administrative error, assigns blame for it to the Applicant, who allegedly did not inform him of the delay in payment. The Tribunal bases its belief on the fact that the Respondent, who had received the Applicant's written observations which were conveyed to him on 30 June 1995, could not be unaware of the insecurity of her situation.

VI. The Tribunal considers the rebuke administered to the Applicant to be invalid, for it would establish as a rule the practice of hounding the Administration in order to receive payment of sums due. The Tribunal affirms that a beneficiary who has not done this has not committed any error.

VII. The Tribunal notes, lastly, that no plausible explanation has been given by the Respondent for the two years' delay which elapsed between the time when the Applicant's right to the grant was recognized and the actual payment of the grant, whereas a precedent deriving from Judgement No. 656 (Kremer and Gourdon) dated 21 July 1994 had enlightened the Respondent as to the right of French nationals living in France and working in Geneva to receive the repatriation grant before the General Assembly's amendment of the relevant staff regulation on 6 April 1995. The Tribunal regards as excessive, and thus unconscionable, the delay in paying this grant and repeats its observation, recalled in its Judgement No. 353 (El-Bolkany) rendered on 1 November 1985, that "an inordinate delay ... not only adversely affects the administration of justice, but on occasions can inflict unnecessary anxiety and suffering to an Applicant". Such is the case with the Applicant, who, in order to receive payment of a grant, was

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forced to endure long periods of anxious waiting and to institute proceedings against the Respondent.

VIII. In the light of the foregoing, the Tribunal decides:

1. To replace paragraph I of Judgement No. 748 by a paragraph reading as follows: "The repatriation grant, while granted to the Applicant, had not yet been paid by the Respondent."

2. To order the Respondent to pay to the Applicant interest accrued at the rate of 6 per cent per annum for the period from 26 April 1995 to 20 January 1997.

(Signatures)

Hubert THIERRY  
President

Julio BARBOZA  
Member

Victor YENYI OLUNGU  
Member

Geneva, 4 August 1998

R. Maria VICIEN MILBURN  
Executive Secretary

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