

Translated from French

ADMINISTRATIVE TRIBUNAL

Judgement No. 884

Case No. 966: AFAWUBO

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 8 October 1996, Mensah Novito Afawubo, a staff member of the Office of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 21 February 1997, the Applicant once again filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 1 April 1997, the Applicant, having made the necessary corrections, filed an application whose principle pleas were as follows:

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... I request redress and compensation as follows:

(a) Concerning the premature reassignment and the unfair, unjust and humiliating treatment it amounted to (...), I seek no monetary compensation but only redress in the form of UNHCR Administration's formal acknowledgement of improper handling of that matter, in that I had been victimized for my stand against misuse of the Organization's funds and no official administrative action sought to find out the truth.

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(b) As regards the unjust denial to me of promotion to L-3 and of a [longer fixed-term appoint (LFTA)] in 1993, and in view of the prejudice to my career development, financial loss and professional humiliation caused by that injustice, I request: (i) regularization by promotion to L-3 and the granting of an LFTA, with retroactive effect from the year of their denial; (ii) corresponding retroactive adjustments of salary and other financial entitlements, as well as of grade-seniority; (iii) damages, the amount of which I leave up to the Tribunal's kind discretion to fix."

Whereas the Respondent filed his answer on 23 March 1998;

Whereas the Applicant filed his written observations on 21 April 1998;

Whereas the Applicant submitted an additional document on 16 June 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNHCR on 1 June 1984 as a Senior Administrative Assistant at the G-8 level, in Lomé, Togo, where he was employed on a series of short-term appointments. On 1 January 1985, he was granted a short-term appointment at the G-7 level, and on 1 January 1986 a fixed-term appointment as an Assistant Administrative Officer at the NO-A level. On 16 January 1989 he was reassigned to Yaoundé, Cameroon, and given the functional title, "Associate Programme Officer". On 1 January 1990, he obtained a one-year intermediate-term appointment at the L-1 level, in Aware, Ethiopia. His functional title was changed to Associate Protection Officer. The appointment in question was extended on 1 July 1991, and he was promoted to the L-2 level. On 16 November 1991, the Applicant was reassigned to Djibouti. On 1 September 1992, he obtained an intermediate-term contract, valid until 31 December 1992, as a Programme Officer. He was assigned to the UNHCR Branch

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Office in Conakry, Guinea. On 1 January 1993, his project personnel appointment at the L-2, step III, level was extended.

On 1 April 1993, at the annual post review meeting of the Regional Bureau for Africa it was decided that post No. "505702, Programme Officer L-3", which was encumbered by the Applicant, should be abolished, effective from 31 December 1993. On 1 January 1994, the Applicant obtained a two-month extension, and subsequently a further project personnel appointment, at the L-2, step IV, level, expiring on 31 December 1994. On 1 August 1994, he was given a new functional title, Senior Programme Officer, and moved up to step V, at the L-2 level; he was granted a special post allowance to the L-3 level; and he was reassigned to Bangui, Central African Republic. On 1 January 1995, he obtained a longer fixed-term project personnel appointment. On 1 January 1996, he was granted a longer term appointment at the L-2, step VI, level. From 25 July to 31 July 1996, when his Standard Assignment Length appointment expired, he was in Geneva awaiting reassignment.

On 24 February 1993, the Applicant initiated appeal proceedings before the Appointments, Promotions and Postings Board, which he had requested to review the recommendation that it had made at its 1992 session not to recommend him for promotion to the L-3 level.

In a memorandum dated 21 June 1993, the Applicant informed the Director of the Regional Bureau for Africa (UNHCR, Geneva) that he had discovered irregularities in the handling of Project fuel funds. On 1 October 1993, the UNHCR Representative in Conakry wrote to the Personnel Administration Service at UNHCR headquarters recommending that the Applicant's contract should be extended for one year and that he should be reassigned to another duty station. The

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Representative complained that the Applicant had never visited refugee sites, and referred to tension between the Applicant and the other Programme Officers.

In November 1993, the Representative wrote a performance evaluation report on the Applicant covering the period from 1 September 1992 to 12 November 1993. On 23 December 1993, the Applicant initiated a rebuttal of his report, contending that the negative image that it conveyed "stems from personal grudge ... directly linked to my fortuitous discovery and exposure, towards the end of 1992, of the unorthodox practices in the supply of Project fuel and expenditure reporting on it by our Transport/Logistics implementing partner ...". In its report dated 7 February 1994, the panel convened to evaluate the rebuttal - while pointing out that it had only a short time allocated to it to review the case, that a field investigation could not be carried out, and that it had questioned only the Applicant - suggested that the Applicant should be reassigned to duties more appropriate to his grade/experience. On 10 February 1994, the Director of the Division of Human Resources Management extended the Applicant's fixed-term appointment to 31 December 1994 and advised him to apply for vacant posts.

On 7 March 1994, the Applicant sent a memorandum to the Director of the Division of Human Resources Management, and a copy thereof to the Chairman of the Appointments, Promotions and Postings Board, in which he claimed that he was entitled to: 1) "Duration of occupancy reclassification" to the L-3 post of Programme Officer; 2) a promotion from the L-2 level he had been at for four years; 3) a longer fixed term appointment. On 16 May 1994, the Appointments, Promotions and Postings Board rejected the Applicant's request for review of the decision not to include his name in the 1993 list for promotion to the L-3 level.

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On 31 March 1994, the Director of the Division of Human Resources Management instructed the Applicant to proceed on assignment to Bangui, Central African Republic.

On 11 July 1994, the Applicant filed an appeal with the Joint Appeals Board. The Joint Appeals Board adopted its report on 9 July 1996. Its conclusion and recommendation were as follows:

"Conclusion and recommendation

31. The Panel concluded that the Appellant has not clearly defined the nature and the content of the administrative decision he wishes to contest and that therefore the appeal is not receivable.

32. In light of the above, the Panel makes no recommendation in support of this appeal."

On 18 July 1996, the Under-Secretary-General for Administration and Management informed the Applicant as follows:

"The Secretary-General has examined your appeal in the light of the Board's report. He has taken note of the Panel's conclusion that you did not clearly define the nature and the content of the administrative decision you wished to contest and that therefore your appeal was not receivable. He has also noted that the panel made no recommendation in support of your appeal. The Secretary-General has therefore decided to take no further action in respect of your appeal."

On 1 April 1997, the Applicant filed the above-mentioned application with the Tribunal.

Whereas the Applicant's principal contentions are:

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1. The decision to reassign the Applicant after he had been at the UNHCR Branch Office in Conakry only 15 months was premature and resulted from "a plot to get rid of [him] ... because of [his] having pointed out and criticized irregularities in the handling of refugee Project fuel funds". The Applicant is thus contesting the decision of the Director of the Division of Human Resources Management, communicated by the Director to him in a memorandum dated 31 March 1994, to instruct him to proceed on assignment to Bangui.

2. The Applicant was entitled to a promotion to the L-3 level and a longer fixed-term appointment as from 1 July 1993. He contests the decision contained in a circular dated 15 December 1993 not to promote him to the L-3 level or grant him a longer fixed-term appointment.

Whereas the Respondent's principal contentions are:

1. The Administration's decision to reassign the Applicant to another duty station was within its discretionary authority, did not violate the Applicant's rights, and was not vitiated by extraneous factors.

2. The Applicant had no right to promotion but only to consideration for promotion, he had been properly considered for a promotion, and his rights had not been violated by his non-promotion.

3. The Applicant had no right to a longer appointment but only to consideration for such an appointment, he had been properly considered for it, and his rights had not been violated by his non-promotion.

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The Tribunal, having deliberated from 13 July to 4 August 1998, now pronounces the following judgement:

I. Having fulfilled various responsibilities in Ethiopia and Cameroon with the Office of the United Nations High Commissioner for Refugees, the Applicant was employed as from 31 December 1992 as a Programme Officer at the UNHCR Branch Office in Conakry, Guinea. However, following the post review meeting of the Regional Bureau for Africa, the Applicant's post was "discontinued" as a result of the High Commissioner's decision dated 30 April 1993. His post appears to have been converted so that it could be given to one of his colleagues, who had previously been assigned to repatriation and not to programmes. The Applicant was then assigned to Bangui as from 1 August 1994 as a Senior Programme Adviser.

The Applicant calls into question the abolition of his post and the decision to reassign him away from Conakry, as a result, he believes, of a plot against him because he had drawn attention to what he regarded as fraudulent handling of UNHCR fuel funds.

The Applicant also contests the denial of a promotion to the L-3 level in accordance with a recommendation by the Appointments, Promotions and Postings Board, in circumstances in which he had been denied a longer appointment. (He was granted a longer fixed-term contract as from 1 January 1996, after having filed an appeal with the Joint Appeals Board on the matter.)

II. The Joint Appeals Board, with which the Applicant had filed an appeal, made a recommendation dated 9 July 1996 declaring the appeal not receivable since the Applicant had not clearly defined the nature and content of the administrative decision he wished to contest.

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III. The Tribunal finds the recommendation by the Joint Appeals Board surprising. Although, owing to the Applicant's lengthy explanations, it is sometimes difficult to determine exactly what he is requesting, he is clearly contesting, on the one hand, the decision dated 31 March 1994 reassigning him to Bangui and, on the other hand, the High Commissioner's circular dated 15 December 1993 concerning promotions and the granting of longer term appointments, since the Applicant's name is not listed among those promoted or granted such appointments. Furthermore, the circumstances in which the Applicant was reassigned away from Conakry do not appear to have been sufficiently clarified or determined. It is the responsibility of the Joint Appeals Board to investigate the circumstances in question.

IV. For the foregoing reasons, the Tribunal remands the case to the Joint Appeals Board for review of all the issues raised by the Applicant.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Member

Victor YENYI OLUNGU
Member

Geneva, 4 August 1998

R. Maria VICIEN MILBURN
Secretary

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