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ADMINISTRATIVE TRIBUNAL

Judgement No. 893

Case No. 762: THIAM

Against: The Secretary-
General of the
United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas on 13 June 1997 Oumar Doudou Thiam, a former staff member of the Office of the United Nations High Commissioner for Refugees (hereinafter UNHCR), filed an application requesting an interpretation of Judgement No. 715 given by the Tribunal on 28 July 1995;

Whereas the conclusions of the application read in part as follows:

"1. The Applicant requests the Tribunal to order the immediate payment of the full amount of the compensation awarded to him by the judicial decision of 28 July 1995. ...

...

"2. The Applicant requests the Tribunal to correct the Respondent's erroneous interpretation of that judicial decision and to declare that the precedent cited by the Respondent (Judgement [No. 234] Johnson [1978] does not apply to the Applicant's case, which the Tribunal is requested to consider today.

..."

Whereas the Respondent filed his answer on 11 August 1998;
Whereas the Applicant filed his written comments on 25
September 1998;

Whereas the facts of the case were set out in Judgement No.
715.

Whereas the Applicant's main argument is as follows:

The Respondent made a mistake in his implementation of
Judgement No. 715. The Applicant should have received the
compensation awarded by the Tribunal in Swiss francs at the
exchange rate (against the United States dollar) in force at the
moment of his separation from service.

Whereas the Respondent's main argument is as follows:

The Applicant's entitlement to compensation was established on
the date of Judgement No. 715, and therefore the Respondent did not
make any mistake in calculating the compensation due to the
Applicant at the exchange rate in force on that date.

The Tribunal, having deliberated from 3 to 20 November 1998, pronounces the following judgement:

I. Following the measures taken in execution of Judgement No. 715 given by the Tribunal on 28 July 1995, the Applicant informed the Respondent that he had received only a partial payment and not the full amount which he should have received in Swiss francs if the exchange rate in force on the date of his separation from service had been used as the basis for calculating the compensation.

The Respondent confirmed to his services in Geneva that the applicable exchange rate was the one in force on the date of the judgement and that if the Applicant disputed the calculation he could apply directly to the Tribunal for an interpretation of Judgement No. 715.

II. In his application the Applicant requests the Tribunal to interpret paragraph XVIII of Judgement No. 715 so as to support his contention that the exchange rate applicable to the calculation of the compensation was the one in force on the date of his separation from service.

In explanation of his argument the Applicant maintains that the use of the exchange rate in force on the date of the judgement caused him a loss of 25,069.80 Swiss francs, payment of which he claims.

III. In considering the admissibility of the application the Tribunal recalls, as it had stressed in paragraph III of Judgement

No. 366, Sabatier (1986), that it had consistently followed the precedent set by Judgement No. 61, Crawford et al. (1955), in which it had recognized its competence to interpret its own judgements in accordance with the general principles of law.

The Tribunal notes that the present application is intended to correct the interpretation, deemed mistaken by the Applicant, of the decision handed down in his favour. The parties differ in fact over the determination of the exchange rate applicable to the payment of the compensation. The Tribunal considers that the Applicant has a legitimate interest in the interpretation of the provision of Judgement No. 715. It will decide between the parties on this point.

IV. As to the substance, the Tribunal notes that the payment in Swiss francs of salaries denominated in dollars requires an exchange operation. It further notes that, in his letter of appointment, the Applicant had been informed that the exchange rate applicable to the financial operations of the United Nations at Geneva was fixed by the Secretary-General.

V. With regard to the determination of the exchange rate applicable to the calculation of the compensation payable in Swiss francs, the Applicant relies on the notion of prejudice in claiming the application of the exchange rate in force on the date of his separation from service. The Applicant considers that only the application of that rate can give effect to the Tribunal's decision.

VI. The Tribunal recalls that in its Judgement No. 253, Klee (1980), to which the Respondent refers, the Tribunal's intention had been to reconstitute the Applicant's career by taking into consideration the payments which he would have received every month if he had remained in the service of the Respondent. However, in respect of all amounts fixed once and for all, as in the present case, it has been the Tribunal's constant jurisprudence to apply the exchange rate in force on the date of the judgement (No. 234, Johnson (1978); No. 253 Klee , para. IX ("With regard to the sum of \$1,000 awarded as costs, ... the amount [in local currency] must be calculated at the exchange rate prevailing on the date of the Judgement ordering payment..."). The Tribunal maintained that the amount owed to the Applicant had been fixed by the judgement with executory force even if the prejudice occurred on the date of his separation from service. It follows that the Respondent was legally correct to use the exchange rate in force on the date of the judgement for calculation of the compensation in Swiss francs.

VII. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Member

Victor YENYI OLUNGU
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Secretary