

PROVISIONAL TRANSLATION

ADMINISTRATIVE TRIBUNAL

Judgement No. 956

Case No. 1017: AL-JASSANI

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Victor Yenyi Olungu; Ms. Marsha A.

Echols;

Whereas, on 1 December 1997, Abdul Razzaq Al-Jassani, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 13 April 1998, the Applicant, after making the necessary corrections, again filed an application containing pleas which read as follows:

“II. PLEAS

I request the Tribunal to:

1. Order implementation of the JAB recommendation ... ‘that an audit be taken to ensure that the sum deducted from my remuneration had been correctly calculated *in accordance with accepted practices at this duty station*’.
2. Request UNDP to provide evidence that:
 - (a) [Paragraph (c) of the interoffice memorandum of 31 July 1993 on Approval of Payment in Convertible Currency to Locally Recruited Staff on Travel outside of Iraq] was complied with by all staff on equal basis during 1991, 1992 and the first

seven months of 1993 i.e. from the date of issuance of the instructions until my case was raised.

- (b) It has paid convertible currency to staff members who were on travel on annual leave *only for time actually spent out of the country*.
- 3. Conclude that I had been treated differently from other [United Nations] and UNDP staff members who had travelled out of the country and received advance payment in convertible currency during 1991, 1992 and the first seven months of 1993.
- 4. Rule that the [two] months salary advanced to me in July 1993 [were] properly and legally processed in accordance with staff rule 103.14 and UNDP Personnel Manual, Section 10300, para. 6.1 and that the advance was recovered [at] the end of July and August in accordance with the said rule.
- 5. Order reimbursement of US\$ 4,732.80 which was deducted from my due bonus and supplement salary in Sep[tember] 1993 and March 1994 respectively, plus an appropriate interest calculated from the above mentioned dates to the day of payment.
- 6. Order an appropriate and adequate compensation for material and moral injuries as a direct consequence of the management actions.
- 7. Pay the costs incurred in prosecuting the application to the UN Administrative Tribunal."

Whereas the Respondent filed his answer on 24 September 1999;

Whereas the Applicant filed written observations on 8 November 1999;

Whereas, on 24 November 1999, the Applicant submitted an additional document;

Whereas, on 14 June 2000, the Respondent submitted written comments on the Applicant's written observations;

Whereas, on 4 July 2000, the Applicant submitted written comments on the Respondent's submission of 14 June 2000;

Whereas the facts in the cases are as follows:

The Applicant entered the service of UNDP, Baghdad, on 3 April 1983 as a local recruit on a three-month fixed-term appointment at the G-6 level, with the functional title of Senior Translator.

His appointment was subsequently extended, and on 1 January 1986 he was promoted to the G-7 level. His appointment was converted to a probationary appointment on 1 July 1987, and on 1 January 1988 he received a permanent appointment. On 1 January 1989, his functional title changed to that of Senior Administrative Assistant.

On 15 October 1991, the Chief, Compensation and Classification Unit, Division of Personnel (DOP), faxed a memorandum to the Resident Representative, UNDP, Baghdad, informing him *inter alia* that, following the approval by the United Nations Controller of the exceptional measure to pay locally recruited staff members on travel outside of Iraq up to a maximum of two months salary in convertible currency, UNDP authorized extension of such payments to locally recruited staff, under certain conditions. In particular, the maximum amount to be converted was two months salary and “[t]he amount converted would only be paid to the extent and for the period that the staff member actually takes annual leave outside of Iraq”.

On 8 July 1993, the Applicant applied for annual leave from 25 July 1993 to 2 September 1993, and requested advance payment of his July and August salary in convertible currency. This was approved on 11 July 1993, and the Applicant received an advance payment of US\$ 6,145.57.

On 31 July 1993, the Officer-in-Charge, UNDP, Baghdad, circulated an inter-office memorandum which reiterated the policy on payment in convertible currency, and underlined paragraph (c) which stated that “[t]he amount converted would only be paid to the extent and for the period that the staff member actually takes annual leave outside of Iraq”.

On 12 August 1993, the Officer-in-Charge wrote to the Applicant, requesting that he “refund the excess amount of the two months salary advanced to [him] in convertible currency beyond the actual period of [his] annual leave spent outside the country as [he had] failed to comply with the conditions stated in item (c) of [the Officer-in-Charge’s] memorandum”. The Applicant responded on 31 August 1993, stating that he had “complied with all the terms of the salary advance as stipulated in the Personnel Manual and the approval to my request of 11 July 1993” and that as the memorandum from the Officer-in-Charge dated 31 July 1993 was issued after the Applicant’s travel to Jordan it was “therefore irrelevant”.

On 2 September 1993, the Officer-in-Charge stated his position once more, and informed the Applicant that the amounts owing would be collected from his monthly “bonus”. On 4 October 1993, the Applicant replied to the Officer-in-Charge. He referred to section 10300, paragraph 6.1 of the UNDP Personnel Manual on the rule governing the advance in case of approved absence, which he fully met. He again stated that the memorandum of 31 July was not applicable to him, and informed the Officer-in-Charge that “none of the staff who were granted 2 months salary in convertible currency in 1991, 1992 [and/or] 1993 ... spent 2 months outside of the country nor [were] their salaries ... refunded”.

On 11 October 1993, the Officer-in-Charge wrote to the Applicant, reminding him that he had been specifically requested to inform UNDP of the actual dates of absence outside Iraq, but that so far he had failed to do so, and advising him that both the Resident Representative and he himself were in full agreement that refunding of the amount had to take place. The Applicant replied on 13 October 1993, reiterating his former position.

On 6 March 1994, the Resident Representative a.i, informed the Applicant that following a full review of the case and the fact that three other staff members had been required to refund advances made he would also have to refund any excess of the convertible currency paid to him. Accordingly, he would instruct the Finance Unit to calculate an appropriate schedule of repayment and make the appropriate deductions from his US dollar payments.

On 25 April 1994, the Applicant wrote to the Administrator, UNDP, New York to request an administrative review of this decision.

In a memorandum dated 28 May 1994 to the Resident Representative a.i., the Applicant provided the names of a number of UNDP staff, stating that they had all received several months salary in convertible currency and that none of them were subjected to withholding their bonus or deduction from their salaries, even though they had not stayed outside Iraq for the entire time.

On 15 September 1994, the Applicant wrote to the Chief, Compensation and Classification Unit, DOP, requesting that UNDP, Baghdad, be instructed to refund US\$ 4,732.80 which had been withheld from his emoluments. On 3 November 1994, the Applicant wrote to the Director, Compensation and Classification Unit, DOP, with the same request.

On 9 March 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 21 May 1997, the JAB submitted its report. Its conclusions and recommendation read as follows:

“Conclusions and Recommendation

33. The Panel concluded that the policy for advance payment in convertible currency to locally recruited staff members who would be travelling outside Iraq had been specific. That policy clearly indicated that staff members would be entitled to payment in convertible currency for time spent out of the country. In this instance, the Appellant had spent ten days out of the country. Therefore, the Panel concluded that the decision that the Appellant refund the portion of the advance payment which had been in excess of that which represented ten days allowance had been properly taken.

34. The Panel concluded that there [might] have been conditions at this duty station which might have led to some confusion about the implementation of travel policies. However, the Panel concluded that no credible evidence had been submitted in support of the Appellant’s contention [that] he had been treated differently from others who had travelled out of the country or that harassment had been the motive behind the Administration’s request that he return the unused portion of his travel advance.

35. The Panel recommends that an audit be taken to ensure that the sum deducted from the Appellant’s remuneration had been correctly calculated in accordance with the accepted practices at this duty station. The Panel makes no other recommendation in support of this appeal.”

On 16 September 1997, the Under-Secretary-General for Administration and Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

“...

The Secretary-General has examined your case in the light of the Board’s report. He has first taken note of the Board’s conclusion that the policy for advance payment in convertible currency to locally recruited staff members who would be travelling outside Iraq had been specific; that policy clearly indicated that staff members would be entitled to payment in convertible currency for time spent out of the country. The Secretary-General has taken note of the Board’s conclusion that you had spent ten days out of the country and that, therefore, the decision that you refund the portion of the advance payment which had been in excess of that which represented ten days allowance had been properly taken. He has also taken note of the conclusion that, although there may have been conditions at this

duty station which might have led to some confusion about the implementation of travel policies, no credible evidence had been submitted in support of your contention that you had been treated differently from others who had travelled out of the country or that harassment had been the motive behind the Administration's request that you return the unused portion of your travel advance.

The Secretary-General has taken note of the board's recommendation that the Administration ensure that the sum deducted from your remuneration had been correctly calculated and of the Board's determination to make no other recommendation in support of your appeal. Accordingly, the Secretary-General has decided to accept the Board's recommendations and to take no further action in your case.

The above-mentioned decision of the Secretary-General is 'the final decision on the appeal' mentioned by staff rule 111.2 (o). Therefore, any recourse should be addressed to the Administrative Tribunal.

..."

On 13 April 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant requested a two months salary advance in convertible currency in accordance with the relevant staff rule (103.14) and the UNDP Personnel Manual (section 10300). In addition, he received written approval to his request from the Resident Representative a.i.
2. The memorandum dated 31 July 1993 from the Officer-in-Charge, UNDP, Baghdad, was not relevant to his case because it was issued while the Applicant was outside Iraq and it should not be implemented retroactively.
3. The Applicant claims that the conditions for payment of salary advance were not applied on an equal basis to staff members who were granted advance payment in convertible currency, and that, therefore, the decision of withholding his bonus was arbitrarily, discriminatorily and prejudicially taken on entirely personal considerations.

Whereas the Respondent's principal contention is:

The Administration's decision that the Applicant refund the portion of the advance payment made to him in convertible currency in connection with his annual leave which was paid in excess of

his entitlement was properly taken, did not violate his rights or constitute harassment and was not vitiated by extraneous factors. The deductions were correctly calculated.

The Tribunal, having deliberated from 11 to 31 juillet 2000, now pronounces the following judgement:

I. The regulation concerning payments in convertible currency (i.e., in United States dollars) to locally recruited UNDP staff on travel outside Iraq were reiterated clearly in a memorandum sent to UNDP staff in Baghdad on 31 July 1993.

This document stated that:

- The payment of convertible currency is available only to staff hired prior to 1 August 1990;
- The maximum amount to be converted is two months' salary;
- The amount converted may only be paid for the period that the staff member actually takes annual leave outside Iraq.

The payment is a one-time measure for one leave period irrespective of duration up to the maximum allowable amount and not for several non-consecutive periods of leave. The provision at issue in this case is the one contained in subparagraph (c). It is based on elementary logic. As Iraqi currency is not accepted outside Iraq, UNDP facilitates its staff members' sojourns abroad by granting them advances in convertible currency (and thus in dollars) for the purposes of their stay abroad and for the duration of such stays. It would be pointless for payments in dollars to be granted to staff members who remain in Iraq during their leaves or who spend only a portion of such leaves outside the country. If such were the case, a staff member would need to spend only a single day outside Iraq in order to receive one or two months' salary in dollars.

The regulations set forth in the 1993 memorandum were not new. The memorandum states that it is reiterating previous rules formulated in a preceding memorandum dated 15 October 1991. It may be assumed that if such reiteration has proved necessary, it is undoubtedly because the regulations were poorly or insufficiently applied in practice.

II. The Applicant, a locally recruited UNDP staff member of long standing (1983), requested in July 1993 that salary advances in dollars be granted to him for July and August because of his intention to travel outside Iraq during his month-long annual leave. This request was accepted on 11 July 1993 and the Applicant received an advance payment of US\$6,145.57. The Applicant actually took his leave (although the dates are not known exactly), but he remained outside Iraq for only 10 days (in Jordan). This fact is not contested by the Applicant. Accordingly, the Administration demanded a refund of the sum in excess of the period of 10 days outside Iraq. As the Applicant refused to comply with this order, the sum of US\$4,732.80 was deducted in September 1993 and March 1994 from the bonuses and salary supplements which he was due to receive. The Applicant requests that this sum be restored to him, as in his view the deduction was unwarranted.

The JAB unanimously rejected the Applicant's claim, while requesting that an audit be taken to verify that the sum deducted from the Applicant's remuneration had been verified in the light of the accepted practices at his duty station. The Board's recommendation was followed by the Secretary-General.

III. The Applicant's arguments in support of his request are unlikely to persuade the Tribunal.

To begin with, the Applicant alleges that he was unaware of the 31 July 1993 memorandum which reached Baghdad precisely when he was in Jordan. It should be noted in this regard that the memorandum merely reiterated the regulations in force, whereas practice had, apparently, deviated from them to an appreciable extent. In point of fact it was not necessary for the Applicant to be informed immediately of this memorandum, which he could have learned of upon returning from leave and which imposed no new obligations on him.

Second, the Applicant maintains that he complied with the rules contained either in the Staff Rules (rule 103.4) or in the UNDP Policy Manual concerning salary advances. He does not, however, mention the specific regulations applicable to UNDP staff members in Iraq, as reiterated in the memorandum of 31 July 1993. This omission wrecks his claim of having complied with the rules.

Third, the Applicant refers to recommendations and resolutions adopted at staff-management meetings held in May and June 1993, which authorized the payment of two months' salary in dollars for staff members' leaves. Nevertheless, nowhere is it stated in the translation of the Arabic

document, made by the Applicant himself, that such a payment in dollars should be granted to staff members for leaves spent outside Iraq.

Lastly - and this is actually the Applicant's chief argument - in 1991 and 1992 and during the first few months of 1993, UNDP granted payments in dollars to other UNDP staff members for extended periods, without their having spent these entire periods abroad and without asking them to refund sums in excess of the duration of these stays.

The Respondent notes in this regard that the staff members in question were travelling outside Iraq not on leave but on training missions or for medical reasons. That, however, is not the crux of the matter as far as the Tribunal is concerned. There is in fact every indication that, prior to the memorandum of 31 July 1993 which reiterated the regulations, the practice of the UNDP financial authorities in Iraq was overly accommodating. The memorandum in question ensured a return to legality. It is inadmissible that on the pretext of equal treatment, an illegal practice should be extended to the Applicant, even if it was not authorized. The Tribunal could not entertain such a notion of equality.

As there is no dispute relating to the amount of the sum received by the Applicant or to that which he was requested to reimburse and which was in fact deducted from his subsequent remuneration, the audit recommended by the JAB would appear to the Tribunal to be useless.

In the light of the foregoing, the Tribunal rejects the application

(Signatures)

Hubert THIERRY
President

Victor YENYI OLUNGU
Member

Marsha A. ECHOLS
Member

Geneva, 31 July 2000

Maritza STRUYVENBERG
Executive Secretary