

PROVISIONAL TRANSLATION

ADMINISTRATIVE TRIBUNAL

Judgement No. 959

Case No. 1051: AYOUB

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. Julio Barboza, Vice-President, presiding; Mr. Victor Yenyi Olungu;
Ms. Marsha A. Echols;

Whereas at the request of Astrid Yousef Ayoub, 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), the President of the Tribunal, with the agreement of the Respondent, extended until 31 October 1998 the time limit for the filing of an application with the Tribunal;

Whereas, on 20 November 1998, the Applicant filed an application containing pleas which read as follows:

“SECTION II PLEAS

Applicant prays the esteemed Tribunal to hold the following:

- a. Respondent should pay Applicant a balance of separation indemnity between early voluntary retirement and termination for redundancy, plus interest.
- b. Payment of counseling fees and secretarial expenses estimated at US \$ 500.”

Whereas the Respondent filed his answer on 29 April 1999;

Whereas the Applicant filed written observations on 6 June 2000;

Whereas, on 6 July 2000, the Applicant submitted an additional document;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 1 June 1978 as an Area staff member at UNRWA Headquarters, Beirut, on a temporary indefinite appointment, in the capacity of Secretary “B”, grade 9. On 4 August 1978, she was transferred to UNRWA Headquarters, Vienna, Austria. On 1 May 1990 she was promoted from Secretary ‘B’ to Secretary ‘A’.

On 31 March 1993, the Applicant was informed that her post would be abolished “on or about the end of June 1994” due to the relocation of the Department of Health to UNRWA Headquarters Branch, Amman. She was advised that, as a result, her post would be abolished by the end of June 1994, but was offered a new appointment as Secretary “A”, grade 10, at UNRWA Headquarters Branch, Amman. On 7 July 1993, she accepted the offer of appointment, but asked to also be considered for appointment to a suitable vacancy in Vienna.

On 10 June 1994, she was informed that she had been appointed to the “post of Secretary to Legal Officer (Recourse Procedures), grade 9, Department of Legal Affairs HQ (Vienna), as of 1 July 1994”.

On 28 October 1994, the Director of Administration and Human Resources, Vienna, wrote to the Applicant. He reminded her that the relocation of UNRWA Headquarters from Vienna would be completed by the end of 1995, and informed her that, in accordance with paragraph 14 of Personnel Directive A/9, she would be declared provisionally redundant with effect from 1 November 1994.

On 13 May 1996, the Chief, Personnel Services Division, Vienna, wrote to the Applicant, informing her that she would be reassigned “on duty travel” to UNRWA Headquarters, Gaza, “on or about 15 July 1996, for a period of four months.

On 30 September 1996, the Applicant together with a number of other staff members wrote to the Director of Administration and Human Resources, Gaza, drawing his attention to Area Staff Circular No. 5/95, dated 6 April 1995, by which his predecessor “repealed and abrogated” all policies and practices the Agency had adopted regarding the termination indemnity or retirement benefit which were applicable prior to the date of the circular. They appealed to him to reinstate the policy

of 18 March 1985 and also make it applicable to Area staff with 15 years of service or more whose services were terminated on the basis of redundancy, and those who were given the option of relocation as Area staff on mission basis or conversion to the international category.

On 27 October 1997, the same staff members wrote another letter to the Director of Administration and Human Resources, once again asking him to consider reinstating the decision of 18 March 1985.

In his reply of 4 November 1996, the Director of Administration and Human Resources informed the staff members that he could find no justification to yet again make a change in the “separation benefit applicable”.

On 18 November 1996, the Applicant again wrote to the Director of Administration and Human Resources on the same subject, copied to the Secretary-General. She drew his attention to the fact that at the time of her separation from service she would have served UNRWA for 18½ years would be aged 48 years and 7 months and that by reason of the timing of her redundancy she could not choose to take voluntary retirement. According to the Applicant, the difference between her termination indemnity and her retirement benefit was 11 months of salary. She requested him to review his decision and to allow her fair and just compensation commensurate with the loss of her career. On 20 November 1996, the Applicant was separated by reason of redundancy.

On 28 January 1997, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB submitted its report on 30 November 1997. The evaluation, judgement and recommendation of the majority of the JAB reads as follows:

“III. EVALUATION AND JUDGEMENT

20. ...

(a) ... the Board noted the Appellant’s contention that she has the right to receive all her retirement benefits, in accordance with the memorandum A/109.2 of 25 February 1985.

...

...

(c) The Board by majority vote noted that the terms of the Appellant’s contract and all applicable regulations and rules have been administered properly and exactly.

(d) Based on the above, the Board could not establish that the Administration's decision had been motivated by prejudice or other extraneous factors against the Appellant.

IV. RECOMMENDATION

21. In view of the foregoing ..., the Board by majority vote makes its recommendation to uphold the Administration's decision and that the appeal be dismissed."

One JAB member filed a dissenting opinion, which read, *inter alia*, as follows:

"I disagree with the Board in that the Agency has a moral obligation towards each employee who has been in its service for so many years, and came out short one and a half years.

I am of the opinion that the Agency could have helped the Appellant and given her case due consideration by offering her special leave without pay for instance or transfer to any other post within the fields similar to other cases at Headquarters Vienna ...

I recommend that the Administration's decision appealed against be reviewed and that the Appellant be given all her due retirement benefits."

On 31 December 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed her that he had accepted the Board's majority recommendation and, accordingly, dismissed her appeal.

On 20 November 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Area Staff Circular No. 5/95 of 6 April 1995, which repealed and abrogated all policies and practices the Agency may have hitherto adopted regarding the payment of termination indemnities or retirement benefits is discriminatory because it prevented the Applicant from opting for early retirement benefit in lieu of termination indemnity.

2. The contested decision did not respect her "acquired rights" to "a redundancy benefit identical with that provided for other staff members", and disregarded principles of justice and equity in not taking into account the fact that upon her being declared redundant she had no

alternative employment and was not assisted in any way by the Respondent to find alternative employment.

Whereas the Respondent's principal contentions are:

1. The Applicant was treated in accordance with the standing Regulations and Rules. At no stage did the Applicant qualify for a retirement benefit in accordance with staff rule 109.2. Even if the 1985 exception had not been abrogated, the Applicant would not have been eligible under it. She did not leave the Agency for another post in the United Nations System, nor did she accept an international post with the Agency. On termination she received that to which she was entitled - a termination indemnity.

3. The Applicant's claim that insufficient efforts were made to place her in an alternate post was not raised before the JAB and is therefore not receivable by the Tribunal.

The Tribunal, having deliberated from 13 to 31 July 2000, now pronounces the following judgement:

I. The Tribunal notes that the Respondent, by letter of 28 October 1994, informed the Applicant that her post would be abolished owing to the relocation of UNRWA headquarters from Vienna to Gaza. After the relocation, the Respondent terminated the Applicant's contract by reason of redundancy as from 20 November 1996.

On 30 September 1996 the Applicant and several other terminated staff members asked the Respondent to cancel Area Staff Circular No. 5/95 of 6 April 1995 on separation benefits applicable to Area (locally recruited) staff members. Following the Respondent's refusal to do so, the Applicant filed an appeal with the JAB, which, in its report of 30 November 1997, rejected the Applicant's claim that the Respondent should recognize her right to benefit from the administrative practices instituted on 28 February 1985 as applied to the benefits for separation from service by reason of redundancy.

The Respondent, after adopting the recommendation of the Joint Appeals Board, communicated the report to the Applicant, who filed an application with the Tribunal on

20 November 1998.

The Applicant is asking the Tribunal to order the Respondent to pay her a redundancy benefit equal to the difference between the early voluntary retirement benefit and the termination indemnity, with interest. She is also asking for reimbursement of fees and costs.

II. The Tribunal notes that the dispute derives from the Respondent's refusal to cancel Area Staff Circular No. 5/95 of 6 April 1995 in order to provide the Applicant with a substantial benefit on her separation from service. The Tribunal will consider in the light of its jurisprudence whether the Respondent was correct in unilaterally abrogating the administrative practices instituted on 28 February 1985 and whether the Applicant had the right to claim the continued application thereof.

III. The Applicant contends that Area Staff Circular No. 5/95 is contrary to the Area Staff Rules and violates her acquired rights.

IV. The Tribunal holds that the aforementioned circulars were issued in implementation of Area staff rule 109.2 and are not contrary to it. With respect to acquired rights, the Tribunal deems that the disputed circular, which is applicable to all Area staff, relates to the statutory portion of the contract. It follows that the Respondent, in the exercise of his discretionary powers in the interest of the Agency, can modify that portion of the contract structure without violating an acquired right of the Applicant. The Tribunal calls attention in this regard to its Judgement No. 25, *Van Tassel* (1953), in which it drew the distinction between the contractual and the statutory elements of a contract between the staff member and the Administration and explained that statutory matters affected in

general the organization of the international civil service and the need for its proper functioning. They involved general rules that had no personal reference.

V. The Applicant claims that the actions of the Respondent in helping some staff members to find employment within the United Nations system and allowing others to benefit from the terms of the superseded circular, while doing nothing on her behalf, were discriminatory and showed bias.

The Respondent contends that the staff members in question, although in a similar position in terms of age and years of service, had skills that enabled them to accept an international appointment with the Agency or another organization in the United Nations system.

VI. The Tribunal finds that the Applicant has not demonstrated that she meets the criteria applied in according special treatment to the beneficiaries of the rights claimed, and it holds her claim in that regard to be unfounded.

VII. Lastly, the Applicant alleges that the Respondent did not make sufficient effort to find her a post.

The Respondent asks that the allegation should be rejected on the grounds that the Applicant is raising it for the first time before the Tribunal without having submitted it to the JAB.

VIII. The Tribunal considers the Applicant's allegation to be an argument that could support a claim on the Respondent. In accordance with article 7 of its Statute, it cannot hear the argument unless it has first been submitted to the JAB. It declares itself not seized of this argument.

IX. With respect to the reimbursement of costs and fees, the Tribunal finds that the Applicant has not sufficiently demonstrated that the costs were unavoidable and that they exceeded the normal expenses of litigation before the Tribunal.

X. For the above reasons, the Tribunal rejects the application.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Victor YENYI OLUNGU
Member

Marsha A. ECHOLS
Member

Geneva, 31 July 2000

Maritza STRUYVENBERG
Executive Secretary