



**Administrative Tribunal**

Distr.  
LIMITED

AT/DEC/964  
3 August 2000

ORIGINAL: ENGLISH

---

ADMINISTRATIVE TRIBUNAL

Judgement No. 964

Case No. 1046: HASHEM

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. Chittharanjan Felix  
Amerasinghe; Ms. Marsha A. Echols;

Whereas, on 25 September 1998, Shaker Hashem, 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), filed an application containing pleas which read as follows:

**“II. The Pleas:**

1. To consider this application as being filed within the time limit stated in article 7, paragraph 4, of the Statute of the Administrative Tribunal of the United Nations (...).
2. Alternatively, to suspend the provisions regarding time limits, according to article 7, paragraph 5, of the Statute.
3. To rescind the decision.
4. To fix 76,549 NIS [new Israeli shekel] (19,882 US\$) as the appropriate remedy for the Applicant.”

Whereas the Respondent filed his reply on 28 April 1999;

Whereas on 12 July 2000, the Tribunal put questions to the Respondent, to which he provided answers on 25 July 2000;

Whereas the facts of the case are as follows:

The Applicant entered service of UNRWA on 27 December 1979 as an Area staff member on a temporary indefinite appointment in the capacity of Assistant Management Officer, at the grade 12, step-1 level, at UNRWA Headquarters, Vienna, Austria.

On 28 October 1994, the Director of Human Resources informed the Applicant that, due to the relocation of UNRWA Headquarters from Vienna to Gaza, West Bank, he would be declared redundant effective 1 November 1994. The Applicant separated from service effective 30 September 1995.

On 18 September 1995, the Chief, Personnel Services Division, informed the Applicant of his entitlements on separation, including removal of his personnel effects and household goods in accordance with rule 21 (e) of Annex V of the Area Staff Rules.

On 11 April 1996, the Applicant wrote a letter to the Chief, Personnel Services Division, and asked UNRWA to make the necessary arrangements for the shipment of his personal effects to Nablus, West Bank, at the end of June 1996.

On 5 June 1996, the Administrative Services Officer wrote to the Applicant and advised him that three estimates had been received for the shipment of his personal effects and that the Agency had awarded the contract to the lowest quoting removal company, Messrs. Auer. The Administrative Services Officer also advised the Applicant of other necessary steps that should be taken in connection with the shipment.

By letter dated 24 June 1996, Messrs. Auer notified the Applicant that his household effects would be packed on 1 July 1996 and shipped the next day. The Applicant was also notified that the delivery from Ashdod to Nablus, West Bank, customs clearance and all destination services would be organized by Auer's partner, the Vayer Group Ltd.

On 25 July 1996, an Administrative Services Officer sent a letter to the Applicant at his

new address in Nablus, West Bank. The Applicant was informed that the Agency had received the invoice for the shipment of his household effects and requested that he confirm whether he had received the consignment in good order. The letter further stated: "If we do not hear from you by 8 August 1996 to the contrary the invoices will be forwarded to [the] Chief, Accounts Division for settlement." The invoices were approved for payment on 12 August 1996.

On 14 August 1996, the Applicant sent a facsimile to the same Administrative Services Officer, referring to the letter of 25 July 1996, and stating that "despite the fact that the goods have been received at Ashdod port, I have not received them yet, and it has been very difficult for me to get in touch by phone with the person handling my case at Vayer Group." He requested that the Agency not pay any invoices regarding this shipment "until you clear the matter with me" and also reserved his right to claim from UNRWA or the shipping agent any damages he might incur.

In a facsimile dated 24 August 1996, the Applicant informed the Chief, Personnel Services Division, that his personal effects had been at Ashdod port for a month or more and that, even though he had left numerous messages, he had been unable to reach the person responsible for his case at the Vayer Group. The Applicant again requested that the Agency not settle any invoices regarding the shipment until they had cleared the matter with him.

In a Note for the Record dated 28 August 1996, another Administrative Services Officer reported that, following receipt of the Applicant's facsimile of 14 August 1996, the Office had contacted the forwarding agent in Tel Aviv, Israel, who said that the Applicant's problem was a "technical and security" one related to his citizenship. According to the agent the problem could be solved by the Applicant's going to Jerusalem and obtaining a certificate to facilitate the release of his consignment, but the Applicant had refused to do so.

On 6 November 1996, the Applicant sent a facsimile to the Vayer Group Ltd, and requested that they give the Delivery Order for his personal effects to another company, the Ben Shoushan Clearing Agents. He stated that he had already paid the latter money to cover storage and

demurrage charges, which might have accrued, and he copied the letter to various UNRWA officials.

On 11 November 1996, the Applicant sent a facsimile to the Commissioner-General complaining about the manner in which the shipment of his personal effects had been handled and the lack of assistance from UNRWA.

On 6 February 1997, the Applicant informed the Director of Administration and Human Resources that he had received his household effects but had incurred certain expenses for which he was holding UNRWA responsible, because they “were incurred due to mismanagement and/or negligence on the part of the shipping agents selected and contracted by UNRWA ...” The Applicant attached an itemized list of his alleged expenses and demanded compensation for a total of NIS 37.049.

On 27 February 1997, the Applicant again wrote to the Director of Administration and Human Resources complaining about his failure to address the claim.

On 21 May 1997, the Acting Chief, Personnel Services Division, advised the Applicant that the Agency had no liability in connection with his claim.

On 18 June 1997, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB submitted its report on 5 March 1998. Its evaluation, judgement and recommendation read, in part, as follows:

### **“III. EVALUATION AND JUDGEMENT**

22. ...

d) The Board noted that the letter of 25 July by which the Administrative Services Officer requested the Appellant to confirm whether his shipment was received in good order and to respond by 8 August, is not enough time for the Appellant to do so as requested, and the [Administrative Services Officer] should have waited for the Appellant to confirm what he requested before settling the invoices.

e) The Board also noted that the Appellant through the Agency had requested another forwarding company to clear his household effects, which it did without any trouble and proved that the shipping agents who were selected by the Agency were negligent in handling his shipment which stayed in the port

for three months. Furthermore, the Board noted that the service contract made by the Agency with the shipping agent included the delivery of the goods to his house and the custom clearance.

f) In this context, the Board is of the opinion that the Agency due to its mismanagement had caused the Appellant certain unnecessary expenses.

...

#### **IV. RECOMMENDATION**

23. In view of the foregoing, ... the Board unanimously makes its recommendation that the Administration's decision appealed against be reviewed and that the Appellant be compensated for his losses."

On 22 April 1998, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

The Agency's obligation regarding your shipment was limited to payment of removal expenses. As such, it invited tenders and selected the lowest tender, a reputable shipping company, to undertake the work. I disagree with the Board's conclusion that the Agency was guilty of any 'mismanagement' in this regard. If the shipping company did not perform its contractual obligations, an action would lie against *it*; in lieu of taking legal action, payment of the shipper's account could be withheld. However, in this case, the account was paid unconditionally, thereby precluding such action and possibly waiving any claim against the company. In my view the Board's analysis of the circumstances in which the shipping company's account was paid is incorrect. You did not allege that you received the letter advising you that the account would be paid until after the deadline set out therein had passed. In accordance with standard Agency practice, the onus was on you to notify the Agency that the shipping company was not performing its obligations, and you should bear the consequences of your failure to make a simple telephone call before the deadline set by the Agency. Subsequently, the Agency had no obligation to assist you, but did so without any negligence. Accordingly, I reject the Board's conclusions and recommendations on this issue.

The shipping company engaged in Vienna has, however, received full payment even though it has not, for whatever reason, performed a significant portion of its obligations. By copy of this letter, I am instructing UNRWA's Office in Vienna to make a written claim for reimbursement against the company for non-performance of obligations

provided for in the contract. In the event that UNRWA is successful in pursuing its claim, any amount received will be promptly remitted to you.

...

Your appeal is therefore dismissed.

...”

In a letter dated 28 April 1998, the Officer-in-Charge, UNRWA Headquarters, Vienna, requested a refund of ATS 36,200 from Messrs. Auer to cover the “port handling, custom clearance and delivery to residence of [the Applicant] in Nablus”. The letter stated that “UNRWA [would] refund [the Applicant] with the same amount which had actually been paid by him to [the other clearing agent] in Israel”. On 13 August 1998, the Applicant was notified by the Officer-in-Charge, Department of Administration and Human Resources, UNRWA, Gaza, that an amount equivalent to ATS 36,200 would be paid to his lawyer, and that although UNRWA had no liability whatsoever to him, this amount would be applied towards reducing (or extinguishing) any compensation that might be ordered by the Administrative Tribunal.

On 25 September 1998, the Applicant filed with the Tribunal the application first referred to earlier.

Whereas the Applicant’s principal contentions are:

1. There was a relationship of principal and agent between the Respondent and Messrs. Auer. Consequently, Messrs. Auer’s negligence is to be imputed to the Respondent who can thus be held liable for the damages proximately suffered by the Applicant.
2. According to the contract between the Respondent and Messrs. Auer, the Respondent had “means of control” over the latter’s services. The Respondent failed to properly exercise this control when it paid the invoice despite the Applicant’s requests not to do so.

Whereas the Respondent's principal contentions are:

1. If the contractual relationship between the Respondent and Messrs. Auer is viewed as one where the Respondent was contracting as an agent for the Applicant, the Respondent would only be liable to the Applicant if he were negligent in selecting the shipping company and the Applicant has not alleged nor proved this negligence.

2 If the Respondent is viewed as having contracted with Messrs. Auer as principal then "UNRWA cannot be vicariously liable to the Applicant for the alleged deficiencies of Messrs. Auer". Any person who suffers losses through the actions of Messrs. Auer can take legal action against that company.

The Tribunal, having deliberated from 4 July to 3 August 2000, now pronounces the following judgement:

I. The present case centers around a contract between the Agency and a shipping company, Messrs. Auer. The Agency engaged in this contract for the benefit of the Applicant, having taken it upon itself, at the request of the Applicant, to make the necessary arrangements for the shipment of his personal effects and household goods from Vienna, then UNRWA Headquarters, to Nablus, West Bank. In fact, Messrs. Auer was contracted by the Respondent to pack and ship the Applicant's household goods and effects to the port of Ashdod, whereupon their partner, the Vayer Group Ltd., would take charge of delivery from Ashdod to Nablus, customs clearance and all destination services. It was to be a door to door service.

II. Under rule 21 (e) of Annex V of the Area Staff Rules, a staff member is entitled to payment by the Agency of the costs for removal of his or her personal effects and household goods. The staff member may make his own shipping arrangements or may request the Agency to make such arrangements for him, as was done by the Applicant.

III. The Agency advised the Applicant that it had received quotations from three companies

and that it had chosen Messrs. Auer which submitted the lowest bid. Thus, there was a contractual relationship between Respondent and Messrs. Auer. The Applicant was advised that Messrs. Auer had made arrangements with their partners, Vayer Group Ltd. for the “delivery from Ashdod to Nablus/West Bank, customs clearance and all destination services”.

IV. The Applicant had no direct dealings with Messrs. Auer or the Vayer Group Ltd. As the contracting party for the benefit of the Applicant, the Agency was responsible for the satisfactory completion of the transportation of his goods and effects.

V. The Tribunal is satisfied that the relevant events are those that took place between 25 July and 14 August 1996. On the first date, the Agency sent a letter to the Applicant at his residence in Nablus, informing him that the Administrative Services Office had received the invoice for the shipment of the Applicant’s household effects and asking the Applicant “In order to settle this invoice” to confirm “that the consignments have been received by you in good order”. The letter continued to state that “[i]f we do not hear from you by 8 August 1996 to the contrary, the invoice will be forwarded to Chief, Accounts Division for settlement”.

In other words, the Agency gave the Applicant 15 days to inform it either that the goods had been satisfactorily delivered or to advise it that the household goods had not yet arrived.

VI. The Tribunal notes that by 8 August 1996, the Agency had not heard from the Applicant. The Tribunal also notes that according to the Respondent the invoice from Messrs. Auer was approved for payment on 12 August 1996. The Tribunal is satisfied that until that time, the Agency could have withheld the payment, if it had received notice from the Applicant that the goods had not arrived. However, it did not receive the Applicant's facsimile until 14 August 1996.

VII. In this connection, the Tribunal notes that the Applicant contends that he did indeed contact the Agency by telephone, on 9 August 1996, i.e. one day after the deadline, to advise it that the shipment had not arrived. The Applicant alleges that the content of that call was precisely the information regarding Messrs. Auer’s “unsatisfactory performance”. This is refuted by the



Respondent. The Respondent does not dispute that the Applicant made a telephone call to the Agency on that date. However, he contests the content of the call. The Respondent argues that there might have been many other motives for it. The Tribunal is not satisfied with the Respondent's argument. The Respondent knew who had received the call and the Tribunal does not find entirely credible the argument that he could not contact that person just because he was no longer a staff member of the Agency. The Respondent did nothing to prove that he had made a reasonable effort to obtain his statement.

VIII. The Tribunal notes that, when the payment was made, the Respondent had no information from the Applicant regarding "satisfactory completion of the contract" to deliver his household goods and personal effects. From the replies to its questions put to the Respondent, it is clear to the Tribunal that the Respondent did not make any other attempts to find out whether the goods had been delivered to the Applicant and whether "satisfactory completion of the contract" had occurred. He acted on the expiration of the deadline mentioned in the 25 July 1996 letter.

IX. The Tribunal finds that the blind faith of the Respondent in the clockwork functioning of the postal system is not entirely justified, particularly when sending mail to regions of the world experiencing political unrest or other forms of conflict. In other words, on the date the Administration ordered payment, it could not have been certain that the Applicant had received the letter.

X. Allegedly, it is the practice of the Agency to communicate such information by letter. However, as an elementary precaution, the Respondent could have found other ways of communicating with the Applicant, using modern technology available to him, such as a facsimile machine, before taking an irreversible step like paying the invoice.

XI. It might be true that withholding payment would not have ensured that the Vayer Group Ltd. fulfilled its duties: circumstances beyond the company's control might have prevented that, such as the fact that the Applicant could not be in Ashdod personally due to the conflict in the area,

or his inability to obtain some of the papers requested by the Vayer Group Ltd. for clearance. But the important fact is that the second company engaged by the Applicant (Ben Shoushan Clearing Agents) did manage to clear the goods and deliver them within a week, without the Applicant's presence at Ashdod. The Applicant alleges, too, that, despite several attempts to contact the Vayer Group Ltd. he did not receive a response to his inquiries. Therefore, the Tribunal finds the Applicant's claim of lack of effort on the part of the Vayer Group Ltd. quite credible. It must be underlined that the Respondent has not denied these allegations made by the Applicant.

XII. The Tribunal cannot accept that the Applicant, against his own interest, denied the Vayer Group Ltd. some indispensable requisite for the clearance of his goods. The Tribunal finds it understandable that the Applicant, feeling abandoned by the Administration and realizing that the Vayer Group Ltd. could not, or would not, perform its duties, sought the assistance of another company. In fact, this makes it clear that the services of the Vayer Group Ltd. were very unsatisfactory to the Applicant.

XIII. The Tribunal is satisfied that the Respondent was negligent in the performance of his duties towards the Applicant. It follows therefrom that the Respondent must compensate the Applicant for the damages suffered as a consequence of such negligence.

XIV. What were such damages? The Applicant has presented a list of losses, dated 6 February 1997, containing an invoice (No. 8640). The Tribunal notes that the amount of his invoice, excluding the customs duty, is 20.549 NIS. If the amount of 10.000 NIS is deducted (equivalent to the ATS 36.200 that was already paid to him by Respondent), the remainder is 10.549 NIS, i.e. some 2,579 US dollars.

XV. The list of losses includes "Cost of buying new winter clothes, new kitchen utensils and appliances and other household items". The Tribunal finds that the Applicant has presented no receipts or other proof of having bought such items. This makes his claim for reimbursement for these items questionable, since the Applicant must have been aware that he had to produce such

evidence to obtain reimbursement. However, the Tribunal understands that a certain extra amount must have been expended by the Applicant.

XVI. The Tribunal also accepts Applicant's claim for "Expenses, telephone, and fax charges", in the amount of 1000 NIS, equivalent to 280 US dollars, as well as the claim for "Compensation for pain and suffering and lost time", in the amount of 5.000 NIS, equivalent to 1,400 US dollars. In total, the Tribunal finds that 5,000 US dollars would be a just compensation, bearing in mind that the Applicant had to buy at least the minimum necessities, while awaiting his shipment.

XVII. In view of the foregoing, the Tribunal orders payment to the Applicant of the amount of 5,000 US dollars, and rejects all other claims.

(Signatures)

Julio BARBOZA  
Vice-President, presiding

Chittharanjan Felix AMERASINGHE  
Member

Marsha A. ECHOLS  
Member

Geneva, 3 August 2000

Maritza STRUYVENBERG  
Executive Secretary