



**Administrative Tribunal**

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ADMINISTRATIVE TRIBUNAL

Judgement No. 988

Case No. 1071: MEZOUÏ

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, First Vice-President, presiding; Mr. Julio Barboza, Second Vice-President; Mr. Kevin Haugh;

Whereas at the request of Hanifa Mezoui, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 September, 31 December 1998 and 31 March 1999 the time limit for the filing of an application with the Tribunal;

Whereas, on 23 March 1999, the Applicant filed an application containing pleas which read as follows:

**"II. PLEAS**

...

Plea #1: To recognize and endorse the unanimous findings of the JAB [Joint Appeals Board].

...

Plea #2: To censure the failure to provide full and fair consideration of the Applicant's candidacy.

...

Plea #3: To find that the Administration was improperly motivated when it conducted unwarranted disciplinary investigations in an attempt to legitimize the improper statements made against the Applicant by the ASG/OHRM [Assistant Secretary-General/Office of Human Resources Management] to the APB [Appointment and Promotion Board] Chairman.

...

Plea #4: [To find that the] Applicant's due process ... rights [were violated].

...

Plea #5: [To find that the] Applicant [has a] right to equitable compensation.

11. [The] Applicant respectfully submits that the JAB Panel failed to fully exercise its jurisdiction by restricting its competence to the level of compensation allowable to [the] Applicant. ...

...

12. *The Applicant respectfully requests the Administrative Tribunal to recommend that:*

(a) The Applicant is given a personal *promotion to the D-1* level, effective on the date when the current incumbent took over the responsibility of the Focal Point for Women or, failing this, that she is paid the difference between her salary at [the] P-5 level and the salary she would have been paid at [the] D-1 level, together with the actuarial equivalent of the difference in pension entitlement for the above period and until she is placed on a regular D-1 post;

(b) Should the remedies requested above be denied, the Applicant is paid exceptionally under *article IX of the Tribunal's Statute*, and for the reasons set forth in the JAB report, an amount equivalent to three (3) years of net base salary as compensation ...;

(c) The Applicant is given *priority consideration* for appointment to any vacant D-1 post for which she is qualified and for which she may apply;

(d) A public apology is prepared to the satisfaction of the Applicant ...;

(e) The Administration *expunges from all records* at the Joint Appeals Board, Administrative Tribunal, OHRM and DAM [Department of Administration and

Management], the USG/DAM's Panel report of 15 July 1996, and takes measures to effectively prevent its further circulation, under penalty of disciplinary measures;

- (f) An amount [of] \$10,000 [be] awarded for the *legal costs* ...;
  - (g) The Applicant [be] paid \$20,000.00 as compensation for the breach of due process ...;
  - (h) The Applicant [be] paid \$30,000.00 as compensation for the *damage to her professional reputation* ...;
  - (i) The Applicant [be] paid \$5,000.00 for the evenings and weekends in April, May and June 1996 when the Applicant was *alienated* from her family obligations, ...;
  - (j) The Applicant [be] paid \$20,000 for *loss of career opportunities*, ...;
  - (k) The Applicant receives compensation for the payment of her *medical and pharmaceutical bills*, and [be] paid an amount of \$50,000 for mental and physical sufferings ...;
  - (l) The USG/DAM is instructed to rescind his damaging and prejudicial *memo of 12 June 1997* (...) and that all copies of it be expunged from official files;
- ..."

Whereas the Respondent filed his answer on 29 March 2000;

Whereas the Applicant filed written observations on 22 June 2000;

Whereas, on 8 August 2000, the Tribunal informed the parties that it had decided to adjourn consideration of the case until its next session;

Whereas, on 7 September 2000, the Tribunal requested the Respondent to provide two additional documents;

Whereas, on 12 September 2000, the Respondent supplied one of the documents requested;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 September 1981 as an Associate Recruitment Officer at the P-2 level in the Office of Personnel Services (now Office of Human Resources Management (OHRM)), on a three-month short-term contract. The Applicant

served on a series of short and fixed-term contracts, receiving promotions on 15 April 1983 (P-3) and on 1 October 1986 (P-4), until 1 October 1988, when she received a permanent appointment. On 21 September 1991, she was appointed as Acting Deputy Executive Officer in the Department of Technical Cooperation for Development (DTCD). On 1 July 1992, she was promoted to the P-5 level and reassigned to the Department for Development Support and Management Services, absorbed by the Department of Economic and Social Affairs (DESA) on 1 February 1998, as Executive Officer. On 2 March 1998, she was appointed as Chief, Non-Governmental Organizations Section, DESA, on a lateral transfer.

On 14 April 1994, Mr. Szekiolda, Chief, Remote Sensing Unit, Cartography and Information Services, Natural Resources and Energy Division, DTCD, lodged an appeal with the Joint Appeals Board (JAB) against a decision not to include his name in the 1992 D-1 promotion register, claiming that his performance evaluation report (PER) had been improperly altered. On 21 February 1995, the JAB recommended, *inter alia*, that an internal investigation be initiated regarding the alleged alteration of Mr. Szekiolda's PER.

On 2 March 1995, the Secretary-General decided to accept the recommendation of the JAB to initiate an investigation and on 29 August 1995, the Investigations Section, Office of Internal Oversight Services (OIOS) issued its report.

On 4 December 1995, the Applicant applied for the D-1 post of Focal Point for Women.

On 8 January 1996, Mr. Szekiolda wrote to the Under-Secretary-General, OIOS, requesting that he investigate the Applicant, accusing her of abuse of authority and harassment, preventing his professional and career development and interfering with his daily duties.

On 22 January 1996, the Under-Secretary-General, OIOS, forwarded the 8 January communication to the Assistant Secretary-General, OHRM, "for review and appropriate action". In his reply of 5 February 1996, he stated that OHRM lacked the staff to undertake such an investigation and that there might be a conflict of interest, and, citing prior examples, suggested that an external investigator be hired.

On 23 January 1996, the Assistant Secretary-General, OHRM, recommended another candidate to the APB for the post of Focal Point for Women.

On 29 January 1996, the Applicant, stating that she had been informed that another candidate had been recommended to the APB for the post, sent a recourse letter for the post of Focal Point for Women to the Chairman of the APB, requesting a review of her application, in accordance with the provisions of administrative instruction ST/AI/390.

On 20 February 1996, the Under-Secretary-General for Administration and Management advised OIOS that launching another investigation would be the best course of action to take. On 1 April 1996, the representative for Mr. Szekiolda wrote to the Assistant Secretary-General, OHRM, on the subject of the proposed investigation of the Applicant. Mr. Szekiolda's representative stated that she had met with the Under-Secretary-General, OIOS, who informed her that the investigation should be handled by OHRM and that OIOS would identify suitable outside investigators. Together with the appropriate OHRM officials, Mr. Szekiolda's representative would meet and assess the outside candidates, as well as establish the terms of reference of the investigation.

On 3 April 1996, the Applicant was informed that she was being investigated and given the resumes of two outside candidates recommended by OIOS to conduct the investigation.

On 4 April 1996, the Applicant wrote to the JAB requesting a stay of action on the decision to investigate the allegations made by Mr. Szekiolda against her. She also requested the Panel on Discrimination and Other Grievances to examine the legitimacy of the investigation.

On 25 April 1996, the two outside candidates mentioned above withdrew their names. The Assistant Secretary-General, OHRM, assured the Applicant on the same date that "any examination of ... new allegations [would] be conducted by officials from within the Organization ..."

On 9 May 1996, the JAB considered the request for a stay of action and recommended that no action be taken. On 21 May 1996, the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General had to accept the Board's recommendation and added that "... as [the] allegations ... remain outstanding, I have decided to constitute a two-member panel ... to investigate ... any new issues which have been raised ... in accordance with due process requirements ..."

On 24 May 1996, the Applicant lodged an appeal with the JAB against the decision to investigate Mr. Szekiolda's allegations against her.

On 31 May 1996, the Under-Secretary-General for Administration and Management informed the Applicant that a two-member fact-finding panel had been established to investigate the allegations and counter-allegations that had not been investigated or addressed by the Administration and to determine if there was a need for further action.

On 7 June 1996, the Applicant wrote to the Secretary-General, alleging a "disgraceful breach of due process" and pointing out that no new issues had been identified for the investigation panel and that the mandate for the panel was a duplication of issues that were *res judicata*. She requested that he constitute a panel with staff participation; allow her to appeal directly to the Tribunal; or, designate an outside judge, mediator or independent counsel. In his reply of 13 June 1996, the Under-Secretary-General for Administration and Management stated that the options suggested by her were premature and that "your due process concerns have relevance to a proceeding which is adversarial in nature and will be fully taken into account if such a stage is reached".

On 9 April 1997, the Assistant Secretary-General, OHRM, wrote to the Chief, Administrative Law Unit, stating that, prior to the formal selection process for the post of Focal Point for Women, he had mentioned to the Chairperson, APB, that the Applicant was under disciplinary investigation. He added that, in his view, it was his duty to do so and that he doubted that the Chairperson, APB, would disclose such confidential information.

The JAB submitted its report on 2 December 1997. Its summary of facts, conclusions and recommendations read, in part, as follows:

***"Summary of facts***

...

10. According to the Appellant, on 22 February 1996, [the Assistant Secretary-General for Human Resources Management] informed [the] Assistant Secretary-General for Public Information and Chairman of the Appointment and Promotion Board (APB), that the Appellant had been under disciplinary investigation. (The Appellant had applied for the D-1 post of the Focal Point for Women. At the time in question the case had been pending before the APB. The APB eventually recommended and the Secretary-General approved, a staff member other than the Appellant for promotion to that post.) [The Assistant Secretary-General for Human Resources Management] has confirmed that he had indeed informed

[the Assistant Secretary-General for Public Information and Chairman of the APB] about the decision 'based on a JAB recommendation to establish the facts after numerous allegations and counter-allegations had been made involving [the Applicant] and [Mr. Szekiolda].' ([The Assistant Secretary-General for Human Resources Management] was apparently mistaken about the chronology of events. The JAB-recommended investigation had been completed by OIOS in August 1995. The new investigation that commenced in January 1996 was not pursuant to any JAB recommendation, but at the request of Mr. Szekiolda.). However, he insisted that 'it was [his] duty to so inform [the Assistant Secretary-General for Public Information and Chairman of the APB,]' and that he 'seriously doubt[ed] that, as alleged, [the Assistant Secretary-General for Public Information and Chairman of the APB] would have disclosed such confidential information.' [...] According to [the] Secretary, APB, she had reviewed all her records on the case, including those pertaining to the APB's deliberations and its correspondence with the [Assistant Secretary-General for Human Resources Management]. However, 'there is no indication whatsoever that there was any investigation going on in the case of [the Applicant]. The issue was never raised, never discussed and never mentioned.' Consequently, it 'did not have any impact on the comparative merits of the candidates for the vacancy' of the Focal Point for Women.

...

24. On 15 July 1996, [the Under-Secretary-General for Administration and Management] transmitted the report of the fact-finding panel to the Appellant. According to [the Under-Secretary-General for Administration and Management] the fact-finding panel had investigated Mr. Szekiolda's allegations against the Appellant, and her counter-allegations against him and the OHRM staff members, but had concluded that there had been no basis for a finding of irregularities which would require further action. (The fact finding report was not made available to the Panel by either party, nor was it found in the Appellant's Official Status file. Consequently, the Panel had no basis on which to deal with the contentions advanced by the Appellant and the Respondent regarding the content of the report.)

...

### ***Conclusions and Recommendations***

46. The Panel *unanimously agreed*:

- i) That there was insufficient evidence to support the Appellant's allegations of improper motivations behind the contested decision to conduct a new investigation on the basis of Mr. Szekiolda's allegations of 8 January 1996; and

ii) That there were grave irregularities during the investigation to the detriment of the interests of the Appellant:

- a) Mr. Szekiolda's Representative had been allowed to be intimately involved in the design of the investigation and selection of an investigator whose mandate was to investigate her client's complaint against the Appellant; and
- b) [The Assistant Secretary-General, OHRM] had improperly disclosed unverified adverse information to the APB chairman without the Appellant's knowledge.

47. In light of the foregoing the Panel *unanimously recommends*:

- a) That the Appellant be paid 20,000 US [dollars] in compensation for the damages that she has suffered as a result of violation of her right to fairness and due process during the planning phase of the investigation, and of her right to comment on or rebut any adverse information before it was submitted to the APB. It should be emphasized that the compensation as recommended herein does not necessarily reflect the Panel's assessment of the seriousness of the mal-administration, but rather takes into account the fact that public funds are spoken to; and
- b) That the report of the fact finding panel on Mr. Szekiolda's allegations and the Appellant's counter-allegations, as well as all other related documents, be expunged from all official files if this has not already been done.

..."

On 25 March 1998, the Assistant Secretary-General, OHRM, transmitted a copy of the JAB report to the Applicant and informed her as follows:

"...

The Secretary-General notes the Panel's finding, contained in paragraph 46 (ii) that 'there were grave irregularities during the investigation to the detriment of the interests of the Appellant: (a) Mr. Szekiolda's representative had been allowed to be intimately involved in the design of the investigation and selection of an investigator whose mandate was to investigate her client's complaint against the Appellant'. The Secretary-General admits that procedural errors occurred in the establishment of the preliminary investigation, but is of the opinion that, as the subsequent panel conducted its investigation with strict



regard for the due process requirements of both parties, your rights were not violated.

The Secretary-General also notes the Panel's findings ... [that the Assistant Secretary-General, OHRM] had improperly disclosed unverified adverse information to the APB Chairperson, without the Appellant's knowledge'. The Secretary-General agrees with the Panel's analysis that it 'was possible that such adverse information had affected the APB proceedings, though it could not be said that, had [the Assistant Secretary-General, OHRM] not disclosed the damaging information, the Appellant would have been promoted to the post of Focal Point for Women'. The Secretary-General is of the opinion that no reference to the investigation, during its course and prior to any decision, should have been made to the APB chairperson as it might have had some influence on the deliberations of the APB. Had you been the selected candidate by the APB for the post, the implementation of the decision should have been postponed and put on hold until the finalization of the investigation and should have been conditional to its favourable outcome. The Secretary-General agrees, therefore, with the Panel's finding that adverse information should not have been disclosed to the APB Chairperson as it was confidential and might have influenced the deliberations of the APB, although it could not be said that without this disclosure, you would have been selected for the post.

In view of the above, the Secretary-General has decided not to accept the Panel's recommendation, contained in paragraph 47 a), first part 'that the Appellant be paid 20,000 US [dollars] in compensation for the damages that she has suffered as a result of violation of her right to fairness and to due process during the planning phase of the investigation...'

The Secretary-General has decided that compensation is not justified as any procedural flaws in the preliminary investigation were cured by the subsequent fact-finding Panel established 'to investigate allegations and counter-allegations by Mr. K.H. Szekiolda and [the Applicant]'. Therefore, you suffered no damage therefrom.

The Secretary-General has also decided not to accept the Panel's recommendation, contained in paragraph 47 a), second part, ' that the Appellant be paid 20,000 US [dollars] in compensation for the damages she has suffered as a violation ... of her right to comment on or rebut any adverse information before it was submitted to the APB'. ... [S]uch an amount of compensation is excessive and ... you [should] be awarded compensation in an amount of 5,000 US [dollars] for the violation of your due process rights in the consideration of your application to the D-1 post of Focal Point for Women before the APB.

The Secretary-General has also decided to accept the recommendation of the Panel, ..., that the report of the fact-finding panel and all other related documents be expunged from all official files.

..."

On 23 March 1999, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The administrative decision to investigate her on the basis of Mr. Szekiolda's allegations that OHRM knew to be false and malicious and to contain nothing new was improper. The aim was to sabotage her candidacy for the position of Focal Point for Women and damage her reputation and position in the Organization.
2. The conduct of both OIOS and OHRM during the investigation was unprofessional, biased and prejudicial with harmful impact on her career and reputation.
3. The Assistant Secretary-General, OHRM, committed a major breach of confidentiality and abuse of authority by allowing the rumour of an investigation to circulate and using it to undermine her candidacy for the post of Focal Point for Women.
4. The procedure followed during the course of the investigation involved numerous violations of her due process rights guaranteed by the administrative regulations, rules and administrative issuances; in particular the attempt to hire outside investigators who were "friends" of the representative of Mr. Szekiolda, was contrary to the spirit of justice, impartiality and objectivity and contravenes the provisions of ST/AI/371, staff regulation 10.1, staff rule 110.4.2 and the internationally recognized rules of ethics and justice.

Whereas the Respondent's principal contentions are:

1. The Administration had the authority and duty to conduct preliminary investigations of allegations of misconduct against the Applicant made by another staff member. The decision to conduct such a preliminary investigation was not improperly motivated.
  2. The procedural error in the initial proposed arrangement for the preliminary investigation did not violate the Applicant's rights since the proposed arrangement was not implemented. The subsequent fact-finding panel conducted its investigation with strict regard for the due process rights of the Applicant as well as the complainant.
1. The Applicant has already been compensated for the violation of her due process rights in connection with her candidacy to the post of Focal Point for Women.
  2. The Applicant's due process rights were otherwise fully respected in connection with the preliminary investigation of allegations of misconduct against her.

The Tribunal, having deliberated from 11 July to 26 July 2000 in Geneva and from 24 October to 22 November 2000 in New York, now pronounces the following judgement:

- I. The dispute in this matter began when the Applicant, a long term UN employee, and Mr. Szekiolda, another employee, accused each other of wrongdoing. Mr. Szekiolda ultimately launched a campaign which culminated in an investigation of the Applicant. While the record contains much crossfire between these two employees, the JAB unanimously found that the Applicant was the aggrieved party because of grave irregularities and recommended compensation in the amount of twenty thousand dollars. The Secretary-General eventually awarded the Applicant five thousand dollars.
- II. The Applicant seeks additional compensation, claiming that five thousand dollars was not proportional to the harm inflicted.
- III. As to the first claim, that Mr. Szekiolda 's allegations were improperly motivated, the Applicant seeks a reversal of the finding that there was insufficient evidence to support her claim. She feels that while it is the right of an employee to trigger an investigation, it is not the right of an employee to abuse the process in order to achieve a retaliatory goal. Though she was vindicated in the investigation, she believes she was unfairly denied adequate compensation for the tribulation of going through a process that never should have occurred.

IV. As to the second claim, that she was not accorded fairness and due process during the investigation, the Applicant states that the twenty thousand dollars recommended by the JAB and the five thousand dollars eventually awarded by the Secretary-General constitute insufficient compensation for the grave irregularities in the investigation.

V. The Tribunal concurs with the JAB's unanimous conclusion that there was insufficient evidence to support the Applicant's accusations of improper motivation behind the decision to conduct an investigation on the basis of Mr. Szekiolda's allegations. However, the Administration deviated from the principles of fairness and due process. Secretary-General's Bulletin ST/SGB/273 of 7 September 1994, paragraph 18, calls for an investigation to be conducted "... with strict regard for fairness and due process for all concerned" so as to "protect individual rights, ... due process for all parties concerned and fairness during any investigation, ..."

VI. After the JAB's careful examination of the available record, the JAB found disturbing evidence which showed that the Applicant's rights to fairness and due process had been significantly abridged in several respects, the most important of which was the right to be informed of the investigation and the breach by the Assistant Secretary-General, OHRM, of the Applicant's right to confidentiality. Mentioning to the Chairman of the APB that the Applicant had been under disciplinary investigation was such a breach of confidentiality. In this respect the Applicant had submitted an affidavit dated 12 June 1997 relating to a discussion between the Assistant Secretary-General, OHRM, and the Chairman of the APB, who supposedly said that the Applicant was not a suitable candidate for the D-1 post of "Focal Point for Women", as she had been under investigation. According to the Applicant, a confidential source had told her that the Chairman of the APB had told that source in confidence that the remarks made by the Assistant Secretary-General, OHRM, "doomed her candidacy".

VII. The Tribunal notes in this connection that the Applicant claimed before the JAB that the Assistant Secretary-General, OHRM, made his comments to the Chairman of the APB (which in her view detrimentally affected her chances of being recommended for the D-1 post of "Focal Point for Women") on 22 February 1996. The Tribunal further observes that on 29 January 1996, the

Applicant sent a letter of recourse to the APB requesting a review of her application for the post. Consequently, the 22 February 1996 comments by the Assistant Secretary-General, OHRM, might have had an effect on the recourse. The Tribunal is of the opinion that the only effect of the Assistant Secretary-General, OHRM's comments was that they might have diminished the Applicant's chances of having the APB consider her candidacy before making its recommendation.

In his decision to accept in part the recommendation of the JAB and to award the Applicant \$5,000.00, the Secretary-General indicated that the damaging information should not have been disclosed as it might have influenced the deliberations. In the Tribunal's view, it would not be unreasonable to assume that the comments impaired the Applicant's chances of being reconsidered for a higher post in the UN Administration. Under these circumstances, the Applicant deserves additional compensation.

VIII. In view of the foregoing, the Tribunal decides that the Administration should pay the Applicant US\$2,500 in addition to the amount she has already been awarded.

IX. The Tribunal rejects all other pleas.

(Signatures)

Mayer GABAY  
First Vice-President, presiding

Julio BARBOZA  
Second Vice-President

Kevin HAUGH  
Member

New York, 22 November 2000

Maritza STRUYVENBERG  
Executive Secretary