



**Administrative Tribunal**

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1038

Case No. 1103: BYRNE-SAYLAM

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Mr. Omer Yousif Bireedo; Ms. Brigitte Stern;

Whereas, on 6 July 1999, Geraldine Byrne-Saylam, a former staff member of the United Nations filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 25 October 1999, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal:

- "(a) To decide that the General Assembly resolution 35/210 [of 17 December 1980] and United Nations Administrative Instruction ST/AI/213/Rev. 1 [of 18 July 1984 entitled 'Retention in Service and Employment Beyond the Age of Retirement'] are applicable to the Applicant with respect to her appointment beyond 30 April 1996;
- (b) To rule that, as compensation for both the injury sustained by the Applicant and the financial losses she incurred owing to withheld extension of appointment through non-respect of the process, a sum of Swiss Francs 24,668 be paid to the Applicant."

Whereas, at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent answer until 31 March 2000 and periodically thereafter until 31 March 2001;

Whereas the Respondent filed his Answer on 31 March 2001;

Whereas the facts in the case are as follows:

The Applicant joined the United Nations as a locally recruited Clerk on a short-term appointment at the G-2 level, with the Accounts Section, Finance Division, Administrative and Financial Services, United Nations Office at Geneva (UNOG) on 24 January 1977. On 1 January 1988 she was transferred to the Personnel Administration Section (PAS), Personnel Service, Division of Administration. Effective 1 July 1988, she was promoted to G-5 as an Administrative Clerk. On 27 November 1995 the Applicant was promoted to the G-6 level, effective 1 July 1994.

On 28 February 1995, a colleague, also working in PAS, requested an extension of appointment beyond the mandatory age of retirement. The colleague was, for United Nations Joint Staff Pension Fund (UNJSPF) purposes, 8 months short of 20 years of contributory service.

On 31 May 1995, the Applicant requested a nine-month extension of appointment beyond the mandatory age of retirement in order to enable her to have 20 years of contributory service to the UNJSPF. On 27 June 1995, the Applicant's supervisor, Personnel Officer, PAS, recommended her request be granted.

On 1 March 1996, the Applicant wrote to the Chief, Personnel Service, requesting written confirmation as to the decision taken regarding her request for extension beyond retirement. On 13 March 1996, the Officer-in-Charge, Personnel Service, replied, informing the Applicant that her appointment would not be extended due to the financial and budgetary crisis of the Organization. He further explained that because of this crisis, "UNOG [would] not be extending staff members beyond the age of retirement".

On 2 April 1996 the Applicant requested special leave without pay (SLWOP) for a period of nine months, the necessary time to complete 20 years of contributory service to UNJSPF. On 11 April 1996, the Applicant was informed, that on an exceptional basis her request for SLWOP has been granted, provided she would pay both her own contribution, as well as the Organization's, to the UNJSPF. In a memorandum dated 15 April 1996, the Applicant accepted this arrangement. On 25 April 1996, the Applicant was informed that payment for her participation in the UNJSPF, beyond her retirement age, would amount to SwF 24,668.28.

On the same day, the Applicant requested the Secretary-General to review the decision not to extend her appointment beyond the mandatory retirement age.

On 21 May 1996, the Chief, Personnel Service, UNOG, provided his "comments and basic facts" in response to the Applicant's above mentioned request. He noted that the Applicant's request was supported by her direct supervisor and that it was considered by the section, where ultimately the decision was taken not to support her request. He further stated that "the non-presentation of [the Applicant's] request [to the Superannuation Committee (SC)] was a conscious decision". Additionally, it was determined that the interests of the Organization would be best served by granting one of the requests for extension, in order to train a new staff member. The decision to extend the Applicant's colleague was based on the fact that the Applicant's grade level (G-6) would provide her with a higher pension than her colleague, who was at the G-5 level.

On 31 January 1997, the Applicant separated from the Organization.

On 11 July 1996, the Applicant lodged an appeal with the Geneva Joint Appeals Board (JAB). The JAB adopted its report on 10 December 1998. Its conclusions and recommendations read as follows:

" Conclusions and Recommendations

71. The Panel concludes first that the Administration did not act properly in not informing the Appellant in due time of the outcome of her request.

72. The Panel further concludes that the Appellant's request for extension beyond retirement age had not received proper consideration and the decision not to present her case to the Superannuation Committee was based on an improper use of the department's discretion.

73. In the absence of any other documentary evidence, the Panel had to work on the assumption that the recommendation of the Appellant's direct supervisor was sufficient to meet the requirement of 8 (b) [of ST/AI/213/Rev.1]. Accordingly, the Panel concludes that PAS should have presented the Appellant's case to the Superannuation Committee.

74. The Panel agrees, however, that it could not say with any certainty what the Superannuation Committee would have decided had the case been properly presented to it. The Panel agrees, however, that the Appellant had suffered damage from the mishandling of her request for extension, for which she should be awarded appropriate compensation.

75. The Panel considers that the Appellant should be paid, as compensation for the injury sustained, a sum equivalent to what she paid to the UNJSPF during her Special Leave Without Pay - to cover both hers and the Organization's share - from 1 May 1996 to 31 January 1997.

76. In view of the considerations and conclusions mentioned above, the Panel unanimously recommends the payment to the Appellant of the amount of [SwF] 24,668.00 (twenty four thousands six hundred and sixty eight Swiss francs)."

On 10 June 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed her as follows:

"...

The Secretary-General is not in agreement with the Board's conclusion that your request should have been submitted to the Superannuation Committee. Administrative instruction ST/AI/213/Rev.1 clearly requires the endorsement of requests for extension by the staff member's department/office. The support of your request by your supervisor cannot substitute for the endorsement by your Department. No such endorsement was given and therefore the requirement for submitting your request to the Superannuation Committee was not satisfied. The Secretary-General is also not in agreement with the Board's conclusion that your request for extension did not receive proper consideration by your Department as nothing on record substantiates such conclusion.

However, the Secretary-General accepts the Board's conclusion that the Personnel Service should have responded to your request for extension within a reasonable time and explain clearly the reason(s) for not endorsing it, as every staff member is entitled to a prompt and reasonably adequate explanation of why action is or is not being taken in response to a request. As an appropriate remedy for the injury sustained, the Secretary-General has decided that you should be compensated in the amount of US \$3,000.

..."

On 25 October 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Chief and the Officer-in-Charge, Personnel Service, were negligent in handling her case and in not presenting her request to the SC.
2. The Administration did not follow the provisions of General Assembly resolution 35/210 and in administrative instruction ST/AI/213/Rev.1

Whereas the Respondent's principal contentions are:

1. In the absence of a departmental recommendation, the Applicant did not have a right to have her case brought to the SC, therefore no rights were violated.

2. The Administration was not negligent in deciding not to submit the Applicant's request to the SC; the decision was within the Respondent's discretion and was made having given it due consideration, following the proper procedures and in accordance with staff regulation 9.5 and ST/AI/213/Rev.1.

3. \$3,000 is appropriate compensation for the delay in responding to the Applicant's request.

The Tribunal, having deliberated from 5 to 29 November 2001, now pronounces the following Judgement:

I. The Applicant appealed to the Tribunal to decide that General Assembly resolution 35/210 and administrative instruction ST/AI/213/Rev.1 are applicable to her with respect to her appointment beyond the retirement age of 60. She also requests compensation for the financial losses she incurred as a result of the non-extension of her appointment.

II. The Applicant joined the Organization on 24 January 1977 as a locally recruited Clerk and separated from service on 31 January 1997, nine months beyond the retirement age of 60.

On 11 April 1996, the Applicant was given SLWOP on an exceptional basis, provided that she would make the necessary arrangements to pay both her own and the Organization's contributions to the UNJSPF and to the Staff Mutual Insurance Society. She accepted the conditions. Accordingly, the Applicant paid SwF 24,668.28.

The Applicant requested review of her case and, on 11 July 1996, lodged an appeal with the JAB against the Administration's decision not to extend her appointment beyond the mandatory age of retirement. The JAB found that she had suffered damage from the mishandling of her request for extension, and unanimously recommended that she should be compensated a sum equivalent to her payment to the UNJSPF, i.e. SwF 24,668.00. The Administration rejected the recommendation of the JAB and decided to pay the Applicant only US \$3,000.00.

III. The Applicant submitted her Application to the Tribunal and requested the Tribunal:

"(a) [T]o decide that the General Assembly resolution 35/210 and ... ST/AI/213/Rev.1 are applicable ... with respect to her appointment beyond 30 April 1996;

(b) [T]o rule that, as compensation for both the injury sustained by the Applicant and the financial losses she incurred owing to withheld extension of appointment through non-respect of the process, a sum of Swiss Francs 24,668 be paid to the Applicant."

The JAB rightly recalled that staff members are not entitled to extension beyond the age of retirement but that granting such an extension falls within the discretion of the Secretary-General, in accordance with regulation 9.5, which prescribes that "[s]taff members shall not be retained in active service beyond the age of sixty years ... The Secretary-General may in the interest of the Organization extend this age limit in exceptional cases." The Tribunal, therefore, must determine the existence of exceptional circumstances in the Applicant's case.

IV. General Assembly resolution 35/210 and ST/AI/213/Rev.1 provide with regard to retention in service beyond retirement age that more flexible criteria may be applied to "locally recruited General Service staff who were already employed by the Organization prior to December 1978 and will have less than 20 years contributory service in the United Nations Joint Staff Pension fund at the age of 60". Furthermore, paragraphs 5 and 6 of ST/AI/213/Rev.1 state that "such staff members may be considered for extension with greater flexibility taking into account the immediate needs of service and the performance record of the staff member" and that "due consideration will be given to individual circumstances, which may involve the pension and insurance coverage of the staff member in question as well as the implications for the career development of other staff".

In the view of the Tribunal, apparently the Applicant has met the above quoted conditions. At the same time her record reflects a very good performance. Accordingly, the Tribunal must consider the Applicant's claim that the Administration mishandled her case by not presenting it to the Superannuation Committee (SC) in 1995.

V. While recognizing that the decision to present a request for extension beyond retirement age to the SC falls within the discretion of a staff member's department, the JAB

recalled that if, as a result of improper procedures or unreasonable exercise of this discretion, a staff member is adversely affected, she can legitimately claim remedy.

The Respondent states that no staff member has a right to extension beyond retirement age except in exceptional circumstances and in the interest of the Organization. (See Judgement No. 343, *Talwar* (1985).) The fact that the Applicant satisfied the relevant requirements did not, however, give her any right to obtain her Department's endorsement of her request for extension to the SC. It only entitled her to receive consideration under the more flexible criteria set out in ST/AI/213/Rev.1.

The Respondent argues that there was no departmental/office recommendation for the Applicant's superannuation. The support of her direct supervisor, in his view, could not take the place of the required departmental endorsement for the purpose of placing her extension request before the SC. Since no such endorsement of the Applicant's request was given, there was no requirement for its submission to the SC.

The Respondent further claimed that fair and full consideration was given to the Applicant's request for superannuation to the SC in conformity with the relevant provisions of resolution 35/210 and ST/AI/213/Rev.1. In the circumstances, the Administration initially decided against extending the appointment of the Applicant and one other staff member, as this would have had negative implications on the functions of the office and upon the career development of other staff. Consequently, the decision not to submit the Applicant's case to the SC was not the result of negligence.

VI. Nevertheless, the Respondent acknowledges that the Personnel Service erred in not responding more promptly, in writing, to the Applicant's request for extension beyond retirement age. It is unfortunate that the Applicant was not advised at this time that her request had been denied. For this reason, the Respondent decided to compensate the Applicant in the amount of US \$3,000.00.

Moreover, the Applicant's request for SLWOP to improve her pension situation was granted by the Administration on an exceptional basis. An award to the Applicant of any amount in excess of the Organization's share would be punitive, and also penalize the Organization for acceding to the Applicant's request for SLWOP.

VII. It is obvious that the Applicant made a request for extension beyond retirement age to the Office of Personnel Service on 31 May 1995, and that the Administration failed to submit

her request to the SC in October 1995. In the view of the JAB, the procedure followed in her case leads to an inference of negligence and misuse of discretion in the treatment by the PAS of the Applicant's request for extension. There are two grounds for this finding. One is related to the lack of evidence on record of how and why the Personnel Service decided not to present the Applicant's case to the SC. It is evident that the Personnel Service did not communicate its decision not to present her case to the SC to the Applicant. Furthermore, the JAB could not find supporting evidence that appropriate action had been taken by PAS to ensure full consideration of the Applicant's request for extension. In this regard, the Tribunal notes that the Applicant's request for extension was supported by her supervisor, Personnel Officer, PAS, but that the Chief, Personnel Service, decided not to forward the request to the SC. This suggests that the requirement of paragraph 8 (c) of ST/AI/213/Rev.1, that the Office of Personnel Service will review the departmental proposals and submit its recommendation to the Secretary-General for his decision, had not been met.

Moreover, the Respondent did not submit convincing evidence to justify acceptance of the request of the Applicant's colleague for extension of service and deny her the opportunity to extend her service and to accumulate more months of service with the UNJSPF. As the JAB rightly pointed out, the immediate needs of the Office would have been met by extending the services of both staff members for different periods.

VIII. As for the claim of the Respondent that the Applicant's services could not be extended because she had been promoted to the G-6 level, the JAB rightly found the explanation of the Administration flawed since the chronology shows that the decision to promote the Applicant was taken one month after the SC met.

In March 1996, it was explained to the Applicant that her service could not be extended due to the "financial and budgetary crisis affecting the Organization". In this regard the Tribunal concurs with the JAB that this explanation is irrelevant as, when the SC met in October 1995, the measures resulting from the financial crisis had not yet come into force.

In view of the aforesaid, the Tribunal is satisfied that the Administration failed to make a prompt and substantiated response to the Applicant's request. While the decision is within the discretionary authority of the department, it is the Tribunal's view that the Applicant was entitled to be given a timely response as to the outcome of her request for extension and, if rejected, a suitable explanation.



IX. The Tribunal is in agreement with the JAB that the non-extension of the Applicant clearly disadvantaged her in terms of insurance and pension coverage. This is because the Applicant was only nine months short of 20 years of contributory service to the UNJSPF, and she had a strong case to be presented to the SC. The Applicant's case was precisely one that required flexibility on the side of the Administration in accordance with ST/AI/213/Rev.1. It is significant to note that the Respondent concedes that the Personnel Service erred in not responding more promptly, in writing, to the Applicant's request for extension beyond retirement age. He states that "it is unfortunate that the Applicant was not advised at this time that her request had been denied". He further states that "[t]he unfortunate delay in communicating the decision to the Applicant has been recognized and adequately compensated".

For this reason the Respondent decided to compensate the Applicant in the amount of US \$3,000.00. However, the Respondent maintains that an award to the Applicant of any amount in excess of the Organization's share, would be punitive and would penalize the Organization for acceding to the Applicant's request for SLWOP.

In view of the foregoing, the Tribunal is convinced that the Personnel Service exceeded the limits of its discretionary power when it decided not to present the Applicant's case to the SC. The Administration did not act properly in not informing the Applicant in due time of the outcome of her request. For this reason, the Applicant suffered damage from the mishandling of her request for extension, for which she should be awarded appropriate compensation. In this regard the Tribunal does not agree with the Respondent that an award to the Applicant of any amount in excess of the Organization's share would penalize the Organization for acceding to the Applicant's request for SLWOP. This is because the injury sustained by the Applicant was severe and she deserves to be adequately compensated.

X. In conclusion, the Tribunal resolves that the Applicant should be paid the amount of SwF 24,668.00 less the \$3,000.00 that had already been paid by the Administration.

XI. Accordingly, the Tribunal:

(a) Orders the Respondent to pay the Applicant the amount of SwF 24,668.00 less the US \$3,000.00 she already received; and

(b) Rejects all other pleas.

(Signatures)

Mayer GABAY  
President

Omer Yousif BIREEDO  
Member

Brigitte STERN  
Member

New York, 29 November 2001

Maritza STRUYVENBERG  
Executive Secretary