



**Administrative Tribunal**

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1058

Case No. 1114: CH'NG

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Mr. Julio Barboza, Vice-President; Mr. Spyridon Flogaitis;

Whereas at the request of Ch'ng Kim Looi, a former staff member of the United Nations Environment Programme (hereinafter referred to as UNEP), the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 31 December 1998 and periodically thereafter until 31 December 1999;

Whereas, on 30 November 1999, the Applicant filed an Application containing pleas which read, in part, as follows:

**"II. PLEAS**

...

8. On the merits, the Applicant respectfully requests the Tribunal:

(a) *To rule* that the [Office of Internal Oversight Services (OIOS)] Investigation Team did not conduct a thorough investigation of the authorship of the 'Document at issue' (...) and that their conclusions were speculative and lacked the support of documentary evidence (...);

...

(d) *To rule* that during the OIOS investigation, the Applicant's right to due process was not observed (...);

(e) *To rule* that the decision of summary dismissal of the Applicant was an arbitrary application of the disciplinary measures available ...;

(f) *To rule* that the Administration further denied the Applicant due process ...;

...

(h) *To rule* that [the] Interim Coordinator, UNEP Regional Coordinating Unit for the East Asian Seas Action Plan (RCU/EAS) misrepresented facts in the statements he made to the OIOS Investigation Team regarding the Applicant's performance and the role that she played in the UNEP office in Bangkok ... [and] was motivated by malice (...);

...

(j) *To rule* that the harsh manner in which the interrogation of the Applicant by the OIOS Investigation Team was carried out ... was tantamount to the use of prisoner of war tactics to apply pressure with the objective of compelling the Applicant to sign a statement (...); and therefore that the Applicant's first statement cannot be accepted as admissible evidence or as binding upon the Applicant ...;

...

(n) *To rule* that the initial denial of due process by UNEP in Bangkok and in Nairobi was so great that it could not be simply remedied by a [JDC hearing] in New York ... [and that] the subsequent decision by the Secretary-General relegated the JDC to the role of a negligible body, and was a further denial of due process ...; and therefore

...

(r) *To order* a rescission of the Secretary-General's decision ...:

Additionally, the Applicant requests the Tribunal:

(s) *To rule* further that the contested decision and the harsh and unreasonable measures accompanying the implementation of the summary dismissal ... have ... led to irreparable damage to the personal and professional image, integrity and reputation of the Applicant (...);

...

(v) *To adjudge* that the token payment of one month base salary as compensation to the Applicant was inadequate to compensate her ...;

...

(x) *To order* as remedy:

(i) ... 4 years net base salary as compensation; and

(ii) the reinstatement of 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's answer until 31 May 2000 and periodically thereafter until 30 November 2001;

Whereas the Respondent filed his Answer on 31 October 2001;

Whereas the Applicant filed Written Observations on 28 February 2002;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNEP on a one-year fixed-term appointment as a Programme Officer, RCU/EAS, Bangkok, at the P-4 level, on 25 May 1995. The Applicant was summarily dismissed on 3 October 1997, prior to the expiration of her final fixed-term contract.

In late June 1997, a temporary employee of RCU/EAS allegedly found a document on a printer. The document consisted of a single unsigned page which appeared to be part of a letter. The document, which bore the name of the Applicant, appeared to be addressed to a government authority in Malaysia and its contents strongly suggested that the Applicant was in direct and personal contact with her home country. The document referred to the shift of the RCU/EAS Office from Bangkok to Kuala Lumpur, Malaysia, (a move which was contemplated by the UNEP management and under discussion with the Malaysian Government); suggested a way in which this move could be brought about; and, proposed a manipulative strategy for getting the job of Coordinator for the writer of the document. The document was handed to the Interim Coordinator, RCU/EAS, who transmitted it to Nairobi, where it was brought to the attention of the Executive Director, UNEP.

On 5 August 1997, the Executive Director, UNEP, requested that OIOS investigate a case of alleged misconduct. OIOS submitted its investigation report on 10 September 1997. According to the report, the Applicant admitted that she had written the document, had addressed it to the Minister of Science, Technology and the Environment, Malaysia, and had

sent it to him by fax, to bring about a shift of the Office (RCU/EAS) to Kuala Lumpur. The report further stated that the Applicant claimed to have written the document on a personal basis and not as an official document and further admitted that it was a "foolish letter for me to write". The report concluded that the Applicant's "deliberate, admitted and wilful lobbying with her home government to enable her to get a job in such a manner which attacked the integrity of the selection process on the United Nations" violated United Nations staff regulations 1.1, 1.3-1.5 and 1.9, and paragraphs 18, 23, 26 and 28 of the International Civil Service Advisory Board's Report on Standards of Conduct in the International Civil Service, and recommended that she be "terminated" from service.

On 11 September 1997, the OIOS report was submitted to the Executive Director, UNEP. On 3 October 1997, the Applicant was informed that the Executive Director, UNEP, had decided that she would be separated from service without notice or compensation in lieu thereof, pursuant to staff rule 110.3 (vii) with immediate effect. On 1 December 1997, the Applicant requested that a Joint Disciplinary Committee (JDC) Panel be convened to review the action taken against her.

On 29 April 1998, the JDC submitted its report. Its finding of facts and considerations read, in part, as follows:

*"Finding of facts*

...

18. The Panel considered that [the Applicant's] statement to the Investigation Team was receivable, as it was made in the presence of two persons. The Panel noted that [the Applicant] did not produce evidence to support her assertions that her statement was made under duress or pressure.

...

*Considerations*

...

25. The Panel ... concluded that UNEP ... staff are subject to ST/AI/371. ...

26. The Panel felt that the Investigation Unit should strictly adhere to the provisions of paragraph 18(a) of its ST/SGB/273 ... [including] observing the principles and procedures set forth for investigation under ST/AI/371.

27. The Panel ... considered that [the Applicant] was not afforded due process. The Panel noted that ... [the Applicant] had not been informed (in writing) of the

allegations against her nor had she been given the opportunity to provide her explanations in writing. ... [T]he Panel was particularly concerned that [the Applicant] had not been notified of her right to the advice of another staff member or retired staff member to assist her in her responses.

28. Furthermore ... [the Panel] felt that [the Executive Director, UNEP,] had made her decision hurriedly without properly considering the matter ...

...

31. The Panel noted that [the Applicant] ... suffered serious injury and financial loss because of the lack of due process and the manner in which the whole matter had been concluded.

32. The Panel therefore feels that the decision to dismiss [the Applicant] summarily was seriously flawed to such a point that the Organization's responsibility is established beyond a doubt."

On 14 July 1998, the Under-Secretary-General for Management sent a copy of the JDC report to the Applicant and informed her as follows:

"The Secretary-General ... is in agreement that you were not afforded full due process during the period leading to the decision that you be summarily dismissed.

However, the Secretary-General has found that the error has been cured as you were afforded full due process during the review proceedings of the Joint Disciplinary Committee. ...

The Secretary-General has carefully considered the evidence in your case ...

The Secretary-General has found that your action was a failure by you to abide by the relevant provisions ... [i]n particular ... a direct violation of staff regulation 1.5 ... In addition, your action was particularly serious in that you were seeking ... private advantage, which is also specifically prohibited by Staff Regulation 1.5. The Secretary-General has concluded that your conduct constituted a serious violation of the United Nations standards of conduct and integrity expected of international civil servants and was incompatible with continued service with the Organization.

..., [T]he Secretary-General has decided to uphold the decision ... to summarily dismiss you for serious misconduct. As compensation for the delay in affording you full due process, the Secretary-General has decided to award you compensation in the amount of one month's net base salary at the rate in effect at the time of your summary dismissal."

On 30 November 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The error made by the Administration in not affording the Applicant due process was not cured by the fact that she was afforded due process during the review proceedings of the JDC.
2. The OIOS report was totally out of context, prejudiced and greatly flawed.
3. The statement given by the Applicant to the OIOS investigation team cannot be acceptable as it was given under false premise, duress and pressure. The Applicant was not and could not be the author of the document, but signed the statement in order to put an end to her ordeal.

Whereas the Respondent's principal contentions are:

1. The Secretary-General's decision to uphold the summary dismissal of the Applicant was a valid exercise of his discretionary authority, and was not vitiated by substantive or procedural irregularity, improper motive, abuse of discretion or any other extraneous factors.
2. The Applicant failed to meet the standards of conduct required of staff members and international civil servants.
3. The Secretary-General has already acknowledged that the Applicant was not afforded due process rights during the period leading to the decision to summarily dismiss her and, and has already adequately compensated her for this irregularity. The Applicant's due process rights were otherwise fully respected.

The Tribunal, having deliberated from 1 to 26 July 2002, now pronounces the following Judgement:

I. On 14 July 1998 the Secretary-General sent a letter to the Applicant, deciding "to uphold the decision taken by the Executive Director of UNEP to summarily dismiss you for serious misconduct". This is the decision the Applicant requests the Tribunal to review.

II. The Applicant joined UNEP on a one-year fixed-term contract as a Programme Officer, RCU/EAS, Bangkok, on 25 May 1995. Her contract was extended several times up to 31 December 1997. She was summarily dismissed on 3 October 1997.

At the time the events under consideration took place, a move of the RCU/EAS from Bangkok to Kuala Lumpur, Malaysia, was contemplated. Apparently, the Applicant had been

instrumental in drawing up the proposal for the move while working in the Ministry of Science, Technology, and the Environment, Malaysia. In her statements to OIOS, she mentioned that the move was not appreciated by the Interim Coordinator, RCU/EAS, amongst others and she maintained that she had some personal problems with the Interim Coordinator, because of her strained relationship with his predecessor, the Acting Coordinator RCU/EAS.

It is not disputed that the Applicant was not present when, in late June 1997, the unsigned document in question was found on a printer. In fact, the person who found the document declares that he kept it "for a couple of days" before presenting it to the Interim Coordinator, who forwarded it to the Executive Director, UNEP. The Tribunal notes from the report presented by OIOS that the document is a single typewritten unsigned page entirely written in upper case, which appears to be part of a letter or memorandum. It has an unusual format, because it is divided in two parts: a number of paragraphs numbered 17 to 20 and a long Post Scriptum. Above the Post Scriptum, in the middle of the document are the words "Yours sincerely" and the name of the Applicant.

The Tribunal finds that the legal importance of this document is doubtful, as it was not signed. Furthermore, the author of that document could have been anyone, because it was found abandoned on a printer, according to the person who claims to have found it. The document was not typed on the computer of the Applicant, as it was not found there when OIOS searched her computer for deleted documents. Yet, this document is attributed to the Applicant.

III. The Tribunal notes that following a lengthy interrogation by OIOS on 20 August 1997 - from 1.10 pm to 8.10 pm - the Applicant signed a statement admitting to have written the document. It also notes that she claims that she did so under extreme pressure: the conditions under which she made her admission were so deplorable and the length of the entire interrogation - for seven hours without a break - so unbearable that she signed the statement "so that they would leave her alone and she would be free to leave". Moreover, no charges were presented to her beforehand so that she was not aware of the exact nature of the interrogation: discussions focused on almost every detail of her career and the problems that she had faced in the office. It was only towards the end of the interrogation that she was given a copy of the unsigned document, and she admitted that she wrote and sent it, albeit on a personal basis.

The Tribunal further notes that the file contains a second statement made by the Applicant immediately following her first statement, between 8.10 pm and 8.15 pm, which reads as follows:

"With reference to my earlier statement I now state that I am not sure that I did or did not send the letter to [the Minister of Science, Technology, and the Environment, Malaysia] as I often put my thoughts on paper but do not take action on it. It is just a way of dealing with frustrations. I remembered distinctly I did not make any phone calls referred to in the letter."

In that statement, which she did not need to make, she accepts again having written that document. The Tribunal finds, however, that both statements could be attributed to the intense psychological pressure of the interrogation.

IV. In the course of its investigation, OIOS, in addition to searching the computers of the RCU/EAS office and interviewing the staff, made a thorough search of international telephone calls and fax transmissions. It concluded that the findings of that search, along with the evidence given by the other staff members, supported the Applicant's relationship to the document in question, in addition to the Applicant's written confession. Subsequently, in a letter dated 3 October 1997, the Head, Staff Administration Services, HRMS, Nairobi, informed the Applicant that the Executive Director, UNEP, had decided that she would be separated from service with immediate effect without notice or compensation in lieu thereof, pursuant to staff rule 110.3 (vii). The Applicant, claiming that no due process was given to her, as she was dismissed for something with which she was never charged and that she was never given the opportunity to defend herself, requested that her case be examined by a JDC Panel.

Before the JDC, the Applicant denied that she was the author of the document, despite her written confession, and detailed the stressful and deplorable conditions under which she had made it. The JCD noted that she suffered serious injury and financial loss and because of the lack of due process and the manner in which the whole matter had been conducted, and concluded that the decision to summarily dismiss her was seriously flawed, engaging the Organization's responsibility.

The Secretary-General, although he was in agreement that the Applicant was not afforded full due process during the period leading to the decision of summary dismissal, found that "this error has been cured as she was afforded full due process during the review



proceedings of the [JDC]", awarded her one month compensation, and upheld the decision to summarily dismiss her.

V. The Tribunal feels that the Organization has to respect and follow its procedures in keeping with what the world expects of the United Nations. (See Judgement No. 1022, *Araim* (2001).) It finds it unfortunate that due process was not respected and guaranteed during the period leading to the decision of summary dismissal. The Tribunal finds that the conditions under which the OIOS investigation was conducted did not guarantee due process either, which becomes abundantly clear from the facts contained in the report of the OIOS.

The Tribunal does not agree with the position taken by the Secretary-General that the lack of due process during the period leading to the decision of summary dismissal was "cured" by the "full due process" the Applicant received in the JDC proceedings. This is one of those cases where the lack of due process at an early stage has an inevitable direct impact on the decisions in the following stages. Normally, in cases of such patent procedural irregularities the decision should be quashed altogether and the disciplinary process should be recommenced *ab initio*.

The Tribunal finds however that procedural irregularities under the particular circumstances of this case should not lead to quashing the decision taken against the Applicant. This is not only because the Tribunal is puzzled with the legal importance of the Applicant's second statement made at 8.15 pm of that same day, 20 August 1997. It is mainly because quashing the decision altogether and ordering reinstatement would have no practical effect for the Applicant, as she had a fixed-term contract until the end of the year 1997. The Tribunal, therefore, decides not to reopen the case on its merits, but to order compensation in view of its findings on procedure. That compensation should be more substantial than the one month compensation awarded by the Secretary-General.

VI. In view of the foregoing, the Tribunal:

1. Orders the payment of a compensation of one year net base salary at the rate in effect at the time of separation from service less the amount paid by the Secretary-General; and,

2. Rejects all other pleas.

(Signatures)

Mayer GABAY  
President

Julio BARBOZA  
Vice-President

Spyridon FLOGAITIS  
Member

Geneva, 26 July 2002

Maritza STRUYVENBERG  
Executive Secretary