United Nations **AT**

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1070

Case No. 1165: FLANAGAN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, Vice-President, presiding; Ms. Marsha A. Echols; Mr. Spyridon Flogaitis;

Whereas, on 7 July 2000, Joseph Flanagan, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 November 2000, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read as follows:

"II: PLEAS

1. The Applicant is contesting:

a) The interpretation and application of paragraphs 27 and 28 of ST/IC/1996/73 [of 10 December 1996, entitled "Payment of Income Taxes"] … in determining the federal income tax reimbursement due to the Applicant.

b) If the interpretation of paragraph 28 … is deemed correct by the [Tribunal] as it was applied to the Applicant's reimbursement, then the Applicant also contests the legality of the paragraph itself, in that the results obtained from the procedure contained

> therein produced a result that contravened the stated purpose of the reimbursement system itself as set out in paragraph 4 of ST/IC/1996/73 …
>
> 2. The Applicant seeks an adjustment to his 1996 Federal tax reimbursement of $5,125.00, plus interest ..."

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 30 April 2001;

Whereas the Respondent filed his Answer on 30 April 2001;

Whereas the Applicant filed Written Observations on 30 May 2001;

Whereas the facts in the case are as follows:

On 31 December 1995, the Applicant retired from service. He opted for a one-third lump-sum commutation from the United Nations Joint Staff Pension Fund. As a United States national, the Applicant is liable to pay income tax to the United States on United Nations salaries and emoluments. In accordance with ST/IC/1996/73, he is entitled to reimbursement of such income tax paid.

In early 1996, the Applicant received a lump sum payment of US$ 337,176. As a result of this lump sum, his United Nations-related income for 1996 exceeded the United States federal tax law threshold of $117,950, thus limiting the deductions he could claim.

On 22 April 1997, the Applicant wrote to the Accounts Division, Office of Programme Planning, Budget and Accounts (OPPBA), requesting a review of his federal income tax reimbursement for 1996, noting a discrepancy between his calculation and that of the Income Tax Unit (ITU). While the ITU had reimbursed the Applicant for the taxes paid on his United Nations related income, it did not recognize that he had paid higher taxes on his non-United Nations income as a direct result of the lump sum payment causing him to exceed the threshold. The Applicant claimed that the reimbursement he received did not comply with the requirements of paragraph 4 of ST/IC/1996/73 as he was not placed in the same position he would have been, had his emoluments not been taxed.

On 24 July 1997, the Director, Accounts Division, OPPBA, responded to the Applicant, stating that

> "the ever-increasing complexity of the United States tax system has made it impractical for the United Nations to calculate tax reimbursements taking into account every single possible up or down effect of excluding United Nations income on each type of allowable deduction, exemption or tax credit dependent on the taxpayer's income".

The Director confirmed that the Applicant would not have reached the tax threshold had his United Nations income not existed but stated that, in the Applicant's case, customary reimbursement calculations procedures, as outlined in ST/IC/1996/73, were followed.

On 23 January 1998, the Applicant wrote to the Secretary-General requesting administrative review of the decision not to adjust his 1996 federal income tax reimbursement.

On 23 March 1998, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 29 February 2000. Its considerations and recommendation read, in part, as follows:

> "Considerations
>
> 20. … The Panel noted that their authority is limited to reviewing the applicable rules and to see if the staff member had suffered any wrongdoing by the Administration. …
>
> 21. … The Panel noted that the tax rules are complex and that they did not have the need or expertise to enquire into the mathematical calculation.
>
> …
>
> 25. … In the absence of any indication that [the Applicant's] reimbursement was calculated differently than the guidelines mentioned in the circular, the Panel could find no basis for determining that he was treated inequitably.
>
> 26. The Panel also reviewed the Respondent's contention that overall the [Applicant] wasn't disadvantaged since he received state/local tax reimbursements over the years.
>
> 27. … The Panel … wished to comment that the [Applicant] and more generally, all staff members subject to paying U.S. taxes, who opt for the lump sum separation payments appear to be disadvantaged as they are not placed in the same position as [United Nations] staff members not subject to U.S. taxation. In light of this case and the very specific group of staff members this computation effects, the Panel suggests that the reimbursement procedures be reviewed periodically to reflect substantive changes in the United States tax laws. ...

Recommendation

28. The Panel *unanimously agreed* to make no recommendation in support of this appeal."

On 23 May 2000, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General agreed with the JAB and had decided to accept its unanimous recommendation and to take no further action on his appeal.

On 17 November 2000, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Respondent's interpretation and application of paragraphs 27 and 28 of ST/IC/1996/73 is deficient and does not meet the requirements of paragraph 4 of ST/IC/1996/73.

2. The procedure used for calculating tax reimbursement discriminates against U.S. tax paying staff members or former staff members.

3. In light of changes in U.S. tax regulations regarding limitations on deductions, the relevant paragraphs dealing with income tax reimbursement should have been modified.

Whereas the Respondent's principal contention is:

The Administration scrupulously and equitably applied the provisions of paragraphs 27 and 28 of ST/IC/1996/73 in the Applicant's case and respected his rights as a staff member.

The Tribunal, having deliberated from 5 to 26 July 2002, now pronounces the following Judgement:

I. In deciding this apparently complicated case, the Tribunal was guided by the legal principles that prevail regarding the reimbursement of individual income tax which, in accordance with United States law, is imposed on staff members who are nationals of the U.S. The principal fact in this case is that, unlike staff members of other nationalities, U.S. nationals are obliged to pay to their Government income tax on their United Nations emoluments, whereas most Member States do not tax United Nations related income.

II. The United Nations, in order to comply with the principle of equality of its staff members, reimburses the U.S. nationals the amounts they pay in taxes on their United Nations related income.

Paragraph 4 of ST/IC/1996/73 clearly explains the reasoning behind this reimbursement system and how the principle of equality is to be applied, stating, *inter alia*: "[t]he purpose of the reimbursement system is to place United Nations staff members subject to taxation in the position they would have had if their official emoluments were not taxed". This is the golden rule that the Tribunal has to follow in order to solve the intricacies of this case; any conclusion of the Tribunal, which might contradict this rule, would have to be abandoned.

III. This leading principle of equality, as reflected above, requires that the amount of tax paid by the Applicant on his income which is *not* related to the United Nations, i.e. on the income derived from a source other than the United Nations, be the same amount that the staff member would have paid on that income had there not been any United Nations related income (or had same not been taxable).

In other words, if the United Nations related income influences the amount of tax payable by the Applicant on his non-United Nations income, the Applicant must be reimbursed the difference between those two figures by the Organization. This is reflected in paragraph 27 of ST/IC/1996/73:

> "The tax attributable to United Nations salary and emoluments is considered to be the DIFFERENCE between: a) the total tax payable for the year as shown in the copies of the tax return submitted by the staff member with the United Nations income (as shown on the statement of taxable earnings) INCLUDED and b) the tax that would be payable if United Nations income were EXCLUDED from total income." (Original emphasis.)

IV. In 1999, the U.S. Federal Government enacted a law whereby the eligibility for deductions for taxpayers with an annual income in excess of US$ 117,950 was significantly reduced. The facts in this case clearly demonstrate that the Applicant would not have exceeded that threshold were it not for the existence of the lump sum of US$ 337,176 that he received from the United Nations as a consequence of his retirement and, accordingly, he would have

benefited from a significantly larger sum in permissible deductions. Therefore, the Applicant is entitled to be reimbursed for the ensuing difference.

V. The Tribunal finds the Respondent's argument regarding his interpretation of paragraph 28 of ST/IC/1996/73 to no avail. Whatever interpretation one gives to the words "actual total deduction" and "actual deduction", the meaning and the logic of paragraphs 4 and 27, as analysed above, leave no room for doubt.

VI. In addition, the Tribunal is not convinced that other benefits accorded by the Organization to the Applicant - and indeed to all U.S. staff members - such as the reimbursement of money paid for local and state taxes, which is a recognized deduction on the staff members' federal income tax, should somehow excuse the Administration from paying the Applicant the *full* difference between the sum he paid in taxes as a result of his United Nations related income and the sum that the Administration reimbursed him.

VII. In view of the foregoing, the Tribunal orders the Administration to pay the Applicant the sum of US$ 5,125, plus eight per cent interest, representing the approximate difference between the amounts which would have met the requirements of paragraph 4 of ST/IC/1996/73 and the actual amount received by the Applicant.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Marsha ECHOLS
Member

Spyridon FLOGAITIS
Member

Geneva, 26 July 2002

Maritza STRUYVENBERG
Executive Secretary