



# Administrative Tribunal

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## ADMINISTRATIVE TRIBUNAL

Judgement No. 1179

Case No. 1271: DUA

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Mr. Kevin Haugh, Vice-President; Mr.  
Dayendra Sena Wijewardane;

Whereas at the request of Chatar Singh Dua, a former staff member of the World Food Programme (hereinafter referred to as WFP)/United Nations Development Programme (hereinafter referred to as UNDP), the President of the Tribunal, with the agreement of the Respondent, extended to 31 January 2003, the time limit for the filing of an application with the Tribunal;

Whereas, on 10 October 2002, the Applicant filed an Application containing pleas which read as follows:

### “II. PLEAS

...

11. On the merits, the Applicant ... requests the Tribunal to find:

- (a) that the UNDP Management has unfairly and unjustly denied the Applicant early separation package revised under UNDP circulars No. UNDP/ADM/98/48 dated 12 June 1998 and No. UNDP/ADM/98/48/Add.1 dated 17 June 1998. ...
- (b) that the UNDP Management has further unfairly and unjustly not allowed the Applicant to continue participating in the [United Nations Joint Staff] Pension Fund for 18 months, the option allowed to UNDP staff members under Circulars referred to in para 11(a) above. ...

(c) that the Respondent (...) has further unjustly and unfairly denied to the Applicant the due benefits by (i) not accepting the request of the Applicant to review the decision of the UNDP Management (...), and (ii) not accepting the recommendation made by the Joint Appeals Board [(JAB)]... to pay to the Applicant [an] additional six (6) months of separation indemnity.

12. Whereafter the Applicant most respectfully requests ...:

(a) that the Applicant be paid [an] additional six months of separation indemnity [as] recommended by the [JAB] ..., and

(b) that the Applicant be paid an amount of \$4,940 to cover the losses he has suffered because of reduced indemnity payment ...”

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 March 2003 and periodically thereafter until 28 November 2003;

Whereas the Respondent filed his Answer on 28 November 2003;

Whereas the Applicant filed Written Observations on 24 December 2003;

Whereas, on 13 July 2004, the Tribunal put questions to the Respondent and the Respondent provided answers thereto on 15 July;

Whereas the facts in the case are as follows:

The Applicant joined the Food and Agriculture Organization in New Delhi in September 1967. According to the Applicant’s Personnel History form, he served as an Administrative Assistant with UNDP, Pune, India, from July 1973 until April 1984. On 2 April 1984, he was granted a three-month fixed-term appointment issued by the UNDP Office, New Delhi. His letter of appointment, and all subsequent letters of appointment, specified that his appointment was “limited to service with WFP only”. He was granted a permanent appointment effective 1 January 1989. At the time of his separation from service, on 30 September 1998, the Applicant was serving as NO-C, Senior Programme Officer, UNDP Office, New Delhi.

On 24 December 1997, the WFP Country Director, New Delhi, wrote to the Applicant stating that “as agreed with you and cleared by our Headquarters we are proceeding with the processing of an agreed separation under section 10800, Sub-Section 1.6, para (g) (h), 2.0, 2.3 and 3.0 para 4 of the UNDP Personnel Manual”. To start the process, the Applicant was obliged to provide a letter certifying that he would not contest the agreed separation, which he did, on 29 December 1997, as follows:

“I hereby certify that I will not contest my agreed early voluntary retirement of my permanent appointment, with effect from 30 June 1998 (COB), subject to payment of twelve months net salary as termination indemnity, and three months net salary in lieu of notice”.

On 13 May 1998, UNDP Headquarters advised the UNDP Resident Representative, New Delhi, that the Administrator, UNDP, had approved the agreed termination, effective 30 June 1998, with payment of 12 months of termination indemnity, three months payment in lieu of notice, and commutation of accrued annual leave up to a maximum of 60 days. Subsequently, it was agreed that the Applicant would take 60 days of annual leave prior to his separation and that his separation would take effect on 30 September 1998. On 12 June, the Applicant signed a second letter certifying that he would not contest his agreed separation.

On 13 July 1998, the Applicant wrote to the Deputy Resident Representative, UNDP, drawing his attention to a UNDP circular UNDP/ADM/98/48 dated 12 June 1998, concerning a separation programme for 1998 (SP98), providing 18 months salary as indemnity; 3 months’ notice; and, an option for 18 months to be served with continued pension fund and medical insurance participation, with contributions to be made by both the staff member and UNDP. While noting that this package did not apply to “locally-recruited staff of WFP”, the Applicant maintained that “since [he was] a UNDP staff member [holding a] UNDP letter of appointment” the exclusion clause did not apply to him and requested that his compensation package be reviewed on the basis of the new circular. He added that if was not offered this new package, he reserve his right to review his consent not to contest his agreed early voluntary retirement.

On 21 August 1998, following a request for guidance from UNDP Headquarters, the Deputy Resident Representative, UNDP, New Delhi, was advised that, while the Applicant would not be able to apply for the SP98, UNDP Headquarters did not find the separation agreement entered into between the Applicant and UNDP acceptable, as far as the separation indemnity to be paid was concerned:

“According to the Organization’s consistent practice, ... an additional 50% is always paid to staff members agreeing to a separation under Staff Regulation 9.1 (c).

You are therefore kindly requested to pay an additional indemnity of 6 months salary to [the Applicant] as part of his agreed separation ...”

Having been advised of the above on 21 August 1998, the WFP Country Representative a.i., New Delhi, addressed a memorandum to the Deputy Resident Representative, UNDP, on 6 October 1998, as follows:

“We have been advised ... that *SP 98 does not apply* to WFP locally recruited staff. ... UNDP had received 300 requests for early separation and they were only going to accept those where abolition of post or restructuring were involved. [emphasis in original.]

... unless there are ‘special circumstances’ such as abolition of post, WFP has not been paying the extra 50% indemnity foreseen under staff regulation 9.3(b).

...”

On 12 November 1998, the Applicant addressed a request for administrative review to the Secretary-General.

On 18 April 1999, the Applicant lodged an appeal with the JAB in New York. The JAB submitted its report on 8 January 2002. Its considerations, findings and recommendations read, in part, as follows:

**“Considerations**

14. The Panel agreed from the outset that central to its consideration was whether, in fact, [the] Appellant was, as he consistently claims, a staff member of UNDP. [The] Respondent, on the one hand, seems to argue that he was not (...), yet explicitly acknowledges that [the] Appellant was indeed a staff member in the first sentence of the reply: ‘The Appellant entered the service of the United Nations Development Programme (UNDP) ... on 2 April 1984.’ Moreover, every subsequent extension and conversion is established by a UNDP letter of appointment signed ‘on behalf of the Administrator of the United Nations Development Programme’. That the appointments were, as noted under Special Conditions, ‘limited to *service* with WFP only’ (emphasis added) does not make them any the less UNDP appointment.

...

17. [The] Appellant signed a second [Early Separation Agreement (ESA)] on 12 June 1998. Coincidentally, that was also the date of issuance of SP98, ... addressed to ‘all UNDP Staff’, which provides in agreed separation of staff members with 15 or more years of service ‘for a maximum of 12 months of separation indemnity plus 6 additional months, that is a maximum of 18 months indemnity’. It was clear to the Panel members that a circular of such import was some time in preparation before issuance, that it must have been under discussion, drafting, revision, etc. in OHR, UNDP, Headquarters during the four months [the] Appellant’s ESA was under consideration in the same Office.

18. The Panel recalls that on several occasions the United Nations Administrative Tribunal (UNAT) has spoken of the responsibility of the United Nations (including UNDP) to be a good employer. ... The Panel came to the

conclusion that Respondent had acted in bad faith and failed in its responsibility as an employer when it failed to notify Appellant of the imminent issuance of SP98 and of its probable effect on his entitlements.

***Findings and recommendations***

19. The Panel found that:

(a) [The] Appellant, as National Professional holding a permanent UNDP appointment, did not fall within any of the categories of staff excluded from the benefits of SP98 (...);

(b) [The] Respondent failed in its obligations as an employer to extend to [the] Appellant fair and equitable treatment.

20. The Panel recommends to the Secretary-General that the Appellant be paid an additional six months of separation indemnity.

...”

On 12 April 1999, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

“The Secretary-General regrets that he cannot agree with the Board’s reasoning and conclusions. The Board appears not to have taken into account that the UNDP Circulars expressly excluded ‘locally-recruited staff of WFP’ from the UNDP 1998 separation program. The Secretary-General has been advised that all WFP locally-recruited staff in the field hold UNDP letters of appointment and, accordingly, were not eligible to be considered for separation under the terms provided for in the UNDP Circulars. There was, accordingly, no bad faith or failure of any kind by the fact that you were not notified of the imminent promulgation of an administrative issuance, which would in any event not apply to you. Accordingly, the Secretary-General has decided not to accept the Board’s recommendation and to take no further action on your appeal.

...”

On 10 October 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. At the material time he was a UNDP staff member and not WFP recruited staff for the following reasons:

(a) All his letters of appointment were UNDP letters of appointment signed on behalf of the Administrator, UNDP;

(b) All payments made to the Applicant, including salary, were made by UNDP;

(c) The Applicant held UNDP identity cards;

(d) At the time of his appointment, all WFP Country offices were manned by locally-recruited UNDP staff.

2. The ESA of the Applicant was finalized under the UNDP staff regulations and rules.

Whereas the Respondent's principal contentions are:

1. The Applicant voluntarily accepted the terms of the ESA. All Applicant's pleas concerning specific terms of his separation entitlements are not receivable.

2. The Applicant is not eligible to participate in the limited programme of early separations under SP98. The Applicant had no right to additional separation indemnity, and the Applicant's separation indemnity was correctly calculated.

3. The Applicant cannot be granted both (i) additional six months of separation indemnity and (ii) \$4,940 to compensate him for the loss he suffered as a result of not having been maintained on the payroll for 18 months as a staff member with partial pay and continued participation in the Pension Fund.

4. The Applicant was treated fairly and justly.

The Tribunal, having deliberated from 6 to 23 July 2004 now pronounces the following Judgement:

I. The Applicant appeals the decision not to apply to him the provisions of SP98, but to maintain his earlier separation agreement under Section 10800, Sub-Section 1.6, para (g) (h), 2.0, 2.3 and 3.0 para 4 of the UNDP Personnel Manual. The central issue in the case is whether the Applicant was a UNDP or a WFP staff member at the time of his separation.

II. Supporting the former are: the fact that the Applicant was locally recruited by UNDP; that all his letters of appointment were UNDP letters of appointment; that the Applicant held UNDP identity cards; and, that although his ESA had been initiated by WFP Headquarters, it was finalized under the UNDP Personnel Manual.

III. In support of the supposition that he was a WFP staff member at the material time, the Tribunal notes that: many locally-recruited WFP staff in the country offices held UNDP letters of appointment; and, that in the Applicant's letters of appointment from 1984 onwards a clause was inserted under point 5 "Special Conditions" which the Tribunal considers particularly important, namely that "This Appointment is limited to service with WFP only". Furthermore, the Tribunal is satisfied that, despite the Applicant's claim that all his salary and

other allowances were paid by UNDP, UNDP only acts as “banker in the field” and that WFP immediately reimburses UNDP for payment of salaries to locally recruited WFP staff.

IV. The Applicant, thus, was a staff member locally engaged by UNDP, but recruited exclusively for work with WFP. It is understandable that when having limited staff at a country office, a smaller Agency such as WFP would ask UNDP to assist in locally recruiting staff members and managing administrative matters. UNDP is after all one of the larger United Nations Programmes, and normally the coordinator of all local United Nations offices, thus taking responsibility for assisting those United Nations Agencies with regard to local matters. In addition to taking care of its own affairs, UNDP thus acts for WFP, even though this Agency is more closely related to the Food and Agricultural Organization of the United Nations than to UNDP. The alternative would be for the Applicant and others in his position to deal directly with WFP Headquarters in Rome, or for WFP to regularly dispatch a fully authorized representative from Headquarters to attend to local administrative matters. Obviously, it is more practical to resort to UNDP’s services, as it already has the necessary resources to perform precisely those routine tasks.

V. Turning now to SP98, the Tribunal notes that it includes the following clause: “The separation programme is applicable to staff of UNDP, and does not apply to staff of UNFPA ... *locally recruited staff of WFP* nor staff administered on behalf of other agencies” (emphasis added). Having come to the conclusion that the Applicant is exactly that, a locally recruited staff member of WFP, the Tribunal is satisfied that this exclusion applies to him and all other similarly recruited WFP staff members. If staff members in the Applicant’s position are not excluded from the application of SP98, the Tribunal wonders which staff are: the Applicant certainly makes no suggestions in this regard.

VI. On 13 July 1998, the Applicant requested UNDP to reconsider the terms of his agreed termination and apply the new compensation package to him, claiming that, as a UNDP staff member, the exclusion clause did not apply to him. He further claimed that there was bad faith on the part of the Administration in failing to inform him that an improved separation package had in fact been agreed and was about to come into effect. The Tribunal rejects this suggestion, as the Administration was at all times aware that it was never intended that the new package would apply to WFP staff such as the Applicant. Guidance was sought from UNDP Headquarters. UNDP replied that the provisions of SP98 did not apply to the Applicant, but suggested adding another six months’ salary (50%) to his package, so that the Applicant would be treated “as all other staff members agreeing to a separation”. However, on

6 October 1998, the WFP Representative a.i. addressed a memorandum to UNDP, advising, inter alia, that WFP was not in a position to pay the Applicant another six months as the extra six months were only paid when there were “special circumstances” such as abolition of post.

VII. The Tribunal will not enter into the consideration of another argument made by the Respondent regarding the compromise signed by the Applicant not to contest his agreed early voluntary retirement of his permanent appointment, because the Tribunal is satisfied that the substance of the Applicant’s relationship was with WFP, whereas that which the Applicant had with UNDP was merely a formality and circumstantial in nature.

VIII. Finally, the Tribunal notes that the termination indemnities specified in SP98 give staff an option:

- (a) to receive 18 months’ salary and three months’ notice; **or**
- (b) to serve for 18 months with continued Pension Fund/medical insurance participation, with contributions from both parties.

Thus, the Applicant misconceived the terms of SP98 and could not have received both, as he has requested.

IX. In view of the foregoing, the Application is rejected in its entirety.

*(Signatures)*

**Julio Barboza**  
President

**Kevin Haugh**  
Vice-President

**Dayendra Sena Wijewardane**  
Member

Geneva, 23 July 2004

**Maritza Struyvenberg**  
Executive Secretary