

**Administrative Tribunal**

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1208

Case No. 1295: HANNA

Against : The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Brigitte Stern, Vice-President; Mr.
Dayendra Sena Wijewardane;

Whereas at the request of Richard Hanna, a staff member of the United Nations, 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 January 2003 and once thereafter until 31 May 2003;

Whereas, on 8 April 2003, the Applicant filed an Application, requesting the Tribunal, *inter alia*:

“8. ... [*To confirm* the findings of the Joint Appeals Boards (JAB.)]

...

10. ... [*To order* as remedy that:

(a) the Applicant be awarded compensation in the amount of:

- (i) 18 months' net base salary and ... allowance at ... Headquarters at the P-4 level for the period of time he was unemployed between 1 November 1998 and 29 March 2000;
- (ii) appropriate compensation for the hardship caused by the unjust denial of reasonable consideration of renewal of appointment and the denial of his rights to fair opportunity for a meaningful career ...

- (iii) appropriate compensation for the undue delay in the administrative actions.
- (b) [T]he Applicant be removed from any 'blacklist' (formal or informal)"

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 August 2003 and twice thereafter until 30 November 2003;

Whereas the Respondent filed his Answer on 28 November 2003;

Whereas the Applicant filed Written Observations on 31 March 2004;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

"Employment History

... [The Applicant was intermittently employed by the Organization on numerous short-term and fixed-term appointments, in various locations and at levels ranging from P-2 to P-4, commencing on 1 March 1980.]

... On 9 March 1997, [the Applicant] began to serve under an appointment of limited duration [(ALD)] ... at the P-4 level as Chief Administrative Officer in the [United Nations] Preventive Deployment Force, (UNPREDEP), Macedonia. Effective 1 May 1998, he was [appointed] on a six-month [fixed-term appointment] as an Administrative Officer [at the P-3 level] in the Mine Action Service, [Department of Peacekeeping Operations (DPKO), New York]. He separated from ... service on 1 November 1998, [upon] expiration of his [fixed-term appointment]. Effective 29 March 2000, the Applicant joined UNHCR, as a Senior Administrative Officer, at the P-4 level.]

Summary of the facts

... On 25 February 1998, [the] Executive Officer, DPKO wrote to ... OHRM, as follows:

'The DPKO Mine Action Service is in urgent need of an Administrative Officer ...

It is proposed that [the Applicant] who is currently a P-4 Administrative Officer in UNPREDEP, Macedonia, under a 300 series contract, be recruited as soon as possible at the P-3 level, for a period of six months to perform this function. His contract will be financed from general temporary assistance funds from the Voluntary Trust Fund.

... [I]t is our understanding that [the Applicant] would be willing to accept an appointment in New York at the P-3 level. However, in view of the relevance and extent of his experience with UNPREDEP and other UN agencies, it would be appreciated if he could be offered as high a step at the P-3 level as possible. ...'

...

[Effective 1 May 1998, the Applicant was appointed as an Administrative Officer at the P-3 level, Mine Action Service, DPKO. On 30 September 1998, the Applicant was informed that his contract would expire, effective close-of-business 31 October 1998.]”

On 30 October 1998, the Applicant requested the Secretary-General to review the administrative decision not to renew his fixed-term appointment.

On 12 February 1999, the Applicant lodged an appeal with the JAB in New York. The JAB adopted its report on 8 January 2002. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

...

27. The Panel ... concluded that the following points were significant in terms of expectation of renewal of contract:

- (a) [The] Appellant had served a cumulative total of 13½ years of satisfactory service by the UN and UN-related agencies prior to his employment in DPKO.
- (b) [The Executive Officer, DPKO] specifically chose [the] Appellant for the post, referring to ‘the relevance and extent of his experience’, and requested that he be recruited.
- (c) He resigned an UNPREDEP appointment, which he could reasonably expect to be renewed ... to accept DPKO appointment.
- (d) [The Executive Officer, DPKO] apparently gave [the] Appellant some verbal assurance of continued appointment. Although in her written response she denied ... that she had done so, she was somewhat less categorical in her oral replies to the Panel’s questions. Moreover, the Panel had difficulty in believing that [the] Appellant would have left a post with at least ten months left to run and returned to New York after 23 years abroad without some basis to expect continued employment.
- (e) [The Executive Officer, DPKO] ‘encouraged [the Appellant] to participate in finance training’ ... In the Panel’s opinion, no reasonable Executive Officer would have encouraged such an expenditure of the Organization’s resources were there not an expectation of an appropriate return on its investment, and such training was certainly perceived by [the] Appellant as an indication of continued employment.

...

36. The Panel thus concluded that [the] Appellant had a reasonable expectation of renewal. ... The Panel decided that any indemnity granted him for violation of his rights would depend on what could be considered a reasonable expectation of the duration of an extension. In this case, given the nature and financing of his post, the duration could not exceed six months.

Recommendation

37. The Panel recommends to the Secretary-General that [the] Appellant be paid a sum equivalent to six months' salary and allowance at Headquarters, the amount to be reduced by the amount of any emolument resulting from employment of [the] Appellant by the [United Nations] or a [United Nations]-related agency during the six months immediately following his separation.

38. The Panel makes no further recommendation with respect to this appeal."

On 15 July 2002, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"After consideration of all the circumstances, the Secretary-General has decided to accept the Board's recommendation for compensation. As you were not employed by the [United Nations] or a [United Nations] agency in the six months following your separation from service, you will receive six months net base salary at the level and step you held at the time of the expiration of your appointment".

On 8 April 2003, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The compensation awarded to the Applicant is not sufficient considering the financial, emotional and professional hardship he endured as a result of the non-renewal of his contract.
2. The Applicant was denied reasonable consideration for renewal of his fixed-term appointment because of discrimination.
3. The Applicant was "blacklisted" and was denied reemployment with DPKO, causing him unnecessary injuries.
4. There were extraordinary delays in adjudicating the Applicant's case warranting additional compensation.

Whereas the Respondent's principal contentions are:

1. The Applicant was fully compensated with the award of six months' net base salary for the Administration's decision not to renew his fixed-term appointment.
2. The Applicant did not suffer injury as a result of the delays in his case.
3. There is no evidence that the Applicant was "blacklisted".

The Tribunal, having deliberated from 28 October to 24 November 2004, now pronounces the following Judgement:

I. This case originates from the non-renewal of a fixed-term appointment which caused the Applicant hardship. The Applicant was employed by the United Nations in various units since 1980, with interruptions between several fixed-term contracts. On 9 March 1997, he was recruited as Chief Administrative Officer, UNPREDEP, Macedonia, on an appointment of limited duration. Effective 1 May 1998, he was reassigned on a six-month short-term contract as Administrative Officer in the Mine Action Service, DPKO. He separated from United Nations service on 1 November 1998 on the expiration of his fixed-term contract. The Applicant contested the decision not to renew his contract, on the ground that he had a “reasonable expectation of renewal” and he lodged an appeal with the JAB on 12 February 1999. The Board found in his favour and awarded him the equivalent of six months’ salary as compensation for the six-month period following the date of expiration of his appointment, at which time he became unemployed. The Secretary-General approved the recommendation of the JAB on 15 July 2002. Challenging the amount of the compensation awarded for the non-renewal of his appointment, the Applicant appealed to the Tribunal.

II. The Applicant requests the Tribunal to award him compensation for the reasonable expectation of renewal for the entire period of time he was unemployed, following his separation from the United Nations; i.e., from 1 November 1998 to 29 March 2000. He also requests

“appropriate compensation for the hardship caused by the unjust denial of reasonable consideration of renewal of appointment and the denial of his right to fair opportunity for a meaningful career and full and fair consideration in all personal matters”.

He contends that the equivalent of six months’ net base salary does not constitute appropriate compensation for the financial, emotional and professional hardship incurred by himself and his family as a result of the non-renewal of his contract. The Applicant states that, following the unexpected termination of his service with the United Nations, his family had to relocate to Norway so that his pregnant wife could receive medical insurance coverage, which resulted in severe financial loss to them. He maintains that, despite his efforts to obtain a further appointment with

DPKO, he remained unemployed for 18 months because of his “blacklisting” in the United Nations system. The Tribunal must, therefore, emphasize that the Applicant is requesting neither reinstatement in his previous post with DPKO nor rescission of the decision not to renew his contract. His appeal concerns the inappropriate amount of damages granted him in compensation for the non-renewal of his contract, his “blacklisting”, and compensation for undue delay in the administrative actions.

III. In considering the Applicant’s appeal, the Tribunal will recapitulate the substance of the JAB’s conclusions. In its report, the Board decided that the Applicant had “a reasonable expectation of renewal, and that the Administration failed to prove that [the Applicant] has been afforded reasonable consideration of such renewal”. Consequently, the Board considered that the amount of compensation which should be awarded in view of the violation of his rights depended on the determination of his reasonable expectation regarding the duration of the renewal of the contract in question. The JAB, for its part, considered that “given the nature and financing of [the Applicant’s] post, the duration could not exceed six months” and, therefore, it recommended that the Secretary-General should award compensation equivalent to six months’ salary.

IV. The Tribunal will therefore begin by examining the nature of the Applicant’s fixed-term appointment of 1 May 1998 in order to determine the extent of his reasonable expectation of renewal. The Tribunal notes that in the Applicant’s letter of appointment of 1 May 1998, under “Special Conditions”, it was provided that the appointment was limited to meeting a temporary need and was subject to termination, with appropriate notice, in the event the temporary need ceased to exist prior to the expiration date indicated in the letter of appointment. The Tribunal does not deny the existence of reasonable expectation of renewal in this case, as recognized by the Board, but it confirms the analysis of the JAB and the position of the Respondent, to the effect that the expectation could not exceed six additional months. Not only was the Applicant’s post clearly of a temporary nature, but it was financed from the Voluntary Trust Fund, a specific source for a limited mission. In the above circumstances, the Tribunal considers the compensation awarded to the Applicant by the Secretary-General to be appropriate.

V. On the subject of the specific financial loss which the Applicant alleges he and his family suffered owing to their relocation to Norway, the Tribunal considers the occurrence to be regrettable but finds that the United Nations cannot be held liable for the compensation requested.

VI. Regarding the Applicant's contention that he was "blacklisted", the Tribunal points out that it has consistently held that the burden of proof rests upon the party making a positive affirmation (see Judgement No. 672, *Burtis* (1994)). While the Applicant affirms that he was "considered for a number of field positions at the P-4 level with DPKO during the period of his forced unemployment but in the end was told in each case that because of the pending appeal they could not re-hire him", the Tribunal has no evidence of any such application or proof that the negative evaluation of his candidature was due to the fact that there was an appeal pending. By the same token, the Applicant limits himself to mere allegations when he maintains that he was "blacklisted by the Executive Officer" or that two DPKO directors "could not consider him until his appeal was decided as he had been effectively 'blacklisted' by the Executive Officer and since all appointments had to go through her, the Applicant didn't have a chance". The Tribunal considers that the Applicant has not produced adequate proof of the existence of such a "blacklist".

VII. In conclusion, the Tribunal will examine the Applicant's request to be awarded appropriate compensation for the delays in the processing of his case. He claims that the case before the JAB took three years and five months before the Secretary-General's decision was issued, i.e., from 12 February 1999, the date on which he filed his appeal with the JAB, to 15 July 2002, the date of the Secretary-General's decision. The Tribunal is increasingly concerned at the protracted nature of the administrative justice process in the Organization. It observes that not only does undue delay undermine the administration of justice, but because of the delay the Applicant was left in great uncertainty as to the outcome of his appeal. It draws attention to its conclusion in Judgement No. 1136, *Sabet & Skeldon* (2003) to the effect that "a significant delay is in itself an infringement of the conditions of service of United Nations officials", as it had already stated in Judgement No. 880, *MacMillan-Nihlén* (1998)). The fact that procedural delays may be prejudicial *per se* was also confirmed in Judgement No. 917, *Ali* (1999) paras. III and IV):

“... undue delay in taking an administrative decision is a procedural irregularity which adversely affects the administration of justice. ... The violation of the Applicant’s procedural rights is in itself adequate moral injury which warrants compensation”.

The Tribunal considers that the delays in the administrative review process in this case are not justified and that the Applicant is therefore entitled to compensation.

VIII. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to pay the Applicant \$2,000 in compensation in addition to the compensation already received; and,
2. Rejects all the other pleas.

(Signatures)

Julio Barboza
President

Brigitte Stern
Vice-President

Dayendra Sena Wijewardane
Member

New York, 24 November 2004

Maritza Struyvenberg
Executive Secretary