United Nations AT/DEC/1225

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1225

Case No. 1168 Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Mr. Spyridon Flogaitis, Vice-President; Ms. Brigitte Stern;

Whereas, on 20 May 2004, a staff member of the United Nations filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal and the Tribunal's established practice, the revision and interpretation of Judgement No. 1135 rendered by the Tribunal on 25 July 2003;

Whereas the Application contained pleas which read as follows:

"Please note that I wish to be given a hearing in oral proceedings.

…

20. The Applicant requests the Administrative Tribunal to declare:

(i) that in paragraph XXX, subparagraph 3, of Judgement No. 1135, the word 'salary' does not refer to net salary, and that the Administration, in calculating the compensation, must not deduct the sum of $59,706 in staff assessment;

(ii) that in paragraph XXX, subparagraph 3, of Judgement No. 1135, the expression 'with all related allowances' includes the Organization's contributions to the medical insurance scheme and the Pension Fund, and that the Administration, in calculating the compensation, must not deduct the sums of $1,417.92 in health insurance contributions and $43,767.36 in Pension Fund contributions;

(iii) that paragraph XXX, subparagraph 6, of Judgement No. 1135 orders the Administration to give the Applicant home leave, in particular by paying the cost of a round-trip air ticket, Kigali-Montreal-Kigali, in business class, or $5,526, as well as six days of salary for the travel days in question, in accordance with the rules applicable to home leave.

21. The Applicant respectfully requests the Administrative Tribunal to order - on the grounds of the Administration's failure to fully implement Judgement No. 1135 within 30 days of its issuance and to return to the Applicant's file all favourable items that had been removed from it … that reparation must be made for the damage caused to the Applicant's reputation by the intentional and malicious withdrawal and/or destruction of documents that were favourable to him and that the Administration must pay the Applicant compensation equivalent to two years' salary.

22. The Applicant requests the Administrative Tribunal to order the Administration to pay him, on the grounds of the delay in implementing the judgement and the extreme bad faith that the Administration continues to display, compensation equivalent to two years' salary and to order the Administration to pay him that amount immediately, and/or failing that, to order the Administration to pay the Applicant a daily fine of $500 per day of delay in implementation.

23. The Applicant respectfully requests the Administrative Tribunal to order the Administration to pay the Applicant 8 per cent interest on the total amount of compensation ordered by Judgement No. 1135 ..."

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 September 2004 and periodically thereafter until 31 January 2005;

Whereas the Respondent filed his Answer on 31 January 2005;

Whereas, on 21 February 2005, the Applicant filed Written Observations amending his pleas as follows:

" … [T]he Applicant respectfully requests the Tribunal:

(a) to establish that by submitting the Answer in English when the Application was submitted in French, the Respondent has violated the Applicant's rights … and, for this violation of his rights, to award compensation in the amount of two years salary plus 8 per cent compound interest, reckoned from the date of the Respondent's Answer;

(b) to accept the conclusions set forth in the [Applicant's pleadings] in their entirety, with the following amendments:

(i) the word "interest" should read "compound interest, reckoned as of 25 July 2003";

(ii) the Applicant also requests the Tribunal to award US$ 5 000 to cover expenses incurred in connection with these [pleadings]."

Whereas, on 24 June 2005, the Tribunal decided not to hold oral proceedings in the case;

Whereas, on 28 June 2005, the Tribunal requested the production of a document from the Respondent and, on 29 June, the Respondent produced the requested document;

Whereas the facts in the case were set forth in Judgement No. 1135.

Whereas the Applicant's principal contentions are:

1. Judgement No. 1135 has only been partially implemented.

2. The Respondent did not have the right to withhold staff assessment, as compensation is not subject thereto.

3. The Applicant was entitled to receive an amount corresponding to post adjustment.

4. The United Nations' contributions to health insurance and pension should have been taken into account in calculating the compensation awarded by the Tribunal.

5. The Respondent wrongfully withheld payment of home leave.

Whereas the Respondent's principal contentions are:

1. The Applicant's entitlement to compensation under the Judgement did not include the amount deducted by the Respondent as staff assessment.

2. The Applicant was not entitled to receive post adjustment as part of the compensation payable pursuant to the Judgement.

3. The Applicant's claim for payments related to pension contributions and health insurance reflects a misconception concerning the nature and purposes of such subsidies.

4. The Applicant's home leave entitlement is subject to a set-off against sums paid to him in error.

5. The Applicant's claim for a new award of additional payments, interest and penalties is not receivable; Judgement No. 1135 has been implemented.

The Tribunal, having deliberated from 24 June to 22 July 2005, now pronounces the following Judgement:

I. The Applicant submits for the Tribunal's consideration what he refers to as an "Application for interpretation and application for implementation and revision of UNAT Judgement No. 1135 (… v. The Secretary-General)". The Tribunal will consider the interpretation issues first, then the implementation problems referred to by the Applicant, before concluding that no real application for revision has been specifically formulated, the title of the Application notwithstanding.

II. The Applicant requests oral proceedings, but the Tribunal does not need to hear his views or those of the Administration in order to know how to interpret one of its own judgements. As the Applicant himself has written, "it is a standing principle of interpretation that a judge is presumed to know what he wrote and that it is not for the parties to rewrite the judgements as they please"; the Tribunal cannot but subscribe to this view. Moreover, although a number of questions are raised with respect to the implementation or revision of the judgement, the Tribunal believes that oral proceedings are unnecessary, as all the relevant information appears in the two parties' written submissions. The request for oral proceedings is therefore denied.

III. The Tribunal will first consider the problems relating to the interpretation of the operative part of its judgement concerning the extent of the compensation awarded to the Applicant. It is useful here to recall the text of the operative part of Judgement No. 1135:

> "For all of the foregoing reasons, the Tribunal:
>
> 1. Declares that the decision not to renew the Applicant's contract shall be considered as null and void, having been taken by an authority without competence to do so and acting, moreover, in a particularly arbitrary fashion;

2. Observes that the reinstatement of the Applicant would not be practical in view of the circumstances;

3. Declares that the Applicant was deprived of his legitimate expectancy of having his contract renewed and orders the Administration to pay the Applicant, by way of compensation, **two years net base salary, allowances and other entitlements** at the rate in effect at the time of the judgement;

4. Orders the Administration to pay the Applicant for his days of work from 25 to 27 September 1995, inclusive;

5. Orders the Administration to pay the Applicant an extended installation grant under the same conditions as those applicable to the other staff of ICTR during the same period;

6. Orders the Administration to give the Applicant the **leave to which he was entitled** under the United Nations rules applicable to United Nations employees at Kigali at the same period;

7. Orders the payment to the Applicant of $5,000 as compensation for the insertion of a defamatory document in his file, and the dissemination of its content by means of the report of the Joint Appeals Board, to say nothing of its being retained in the Applicant's personnel file;

8. Orders that all defamatory and forged documents that may be in the Applicant's personnel file be withdrawn and that all favourable items that had been removed from the file be returned to it, and orders the Administration to send written confirmation to the Applicant that it has carried out that task, giving a specific list of the documents concerned, within six months;

9. Rejects all other pleas" (emphasis added by the Tribunal).

IV. The Tribunal will begin by considering the application for interpretation. The Tribunal notes, in the first place, that while its Statute makes no reference to its power of interpretation, it has always held itself competent to interpret one of its own judgements, should either party find such judgement unclear. It may be recalled that the International Court of Justice, in its advisory opinion of 13 July 1954, recognized that the Tribunal was a judicial body. The power to interpret should be considered inherent in its judicial function, as the Tribunal recognized in the *Crawford* case, noting that "the competence of national and international courts to interpret their own judgements is generally recognized" (Judgement No. 61 (1955), para. 1). The Tribunal recalled this inherent power of interpretation more recently in its decision concerning the *Al Ansari* case:

> "... in accordance with both the advisory opinion of the International Court of Justice of 13 July 1954 and its own jurisprudence, the Tribunal will consider applications for interpretation of judgement, where there is dispute as to the meaning or scope of the judgement" (Judgement No. 1164 (2004), para. IV).

V. At the outset, it should be noted that this application for interpretation has come before the Tribunal largely because of a discrepancy between the original French text and the English translation thereof. From a certain perspective, of course, this may be regarded as an institutional irony, since the Applicant in this case is himself a French and English translator! In any event, the translation introduces new elements over and above those contained in the original judgement, since the French expression "*deux ans de salaires avec toutes les indemnités*" ("two years' salary with all related allowances") was translated into English as "net base salary, allowances and other entitlements". It is immediately clear that two ideas have been added here: that of "net base" salary and that of "other entitlements", which completely distort the meaning of the original decision. The Tribunal disputes the Applicant's contention that "a principle governing the interpretation of translations of legal texts is that, in such a case, the applicant is entitled to demand that the interpretation be based on the most advantageous version"; according to this logic, he can base his claims on whichever version will best support his arguments, which are aimed at maximizing the already generous amount of compensation awarded. However, in no case can an applicant justifiably take advantage of an approximation or error in a translation. On the contrary, a general principle of interpretation is that whenever there is a discrepancy between an authentic original text and a translation, the original text prevails. The Tribunal's interpretation of its judgement will therefore be based on the French version.

VI. In interpreting the text, the Tribunal will follow current international practice, which is to interpret an instrument in accordance with the "ordinary meaning" to be given to the terms of the instrument "in their context and in the light of its object and purpose" (Vienna Convention on the Law of Treaties, art. 31, paras. 1 and 4). The International Court of Justice has frequently recalled these principles of interpretation, as, for example, in its advisory opinion on the competence of the General Assembly for the admission of a State to the United Nations: "The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and

ordinary meaning in the context in which they occur" (*I.C.J. Reports 1950,* p. 8). The Tribunal has likewise made frequent reference to the "ordinary meaning" of words (cf. Judgement No. 852, *Balogun* (1997)) and to their context, as in the *Merani* case, in which the Tribunal stated:

> "In interpreting the text we will give words their 'natural and ordinary meaning'. (Cf. Judgement No. 852, *Balogun*, (1977)). This follows general international practice, which refers to interpretation according to the 'ordinary meaning' of the terms 'in their context and in the light of [their] object and purpose' unless the parties intended to give the word a special meaning. (*Vienna Convention on the Law of Treaties*, Articles 31.1 & 31.4)" (Judgement No. 942 (1999), para. VII).

VII. Thus, before considering in detail the various points whose interpretation seems unclear to the Applicant, the Tribunal wishes to describe the spirit in which its judgement was formulated. This will provide a basis for the textual analysis of the operative part of Judgement No. 1135 in the light of its object and purpose. The Tribunal held that, given the conditions in which the Applicant's translator contract with the International Criminal Tribunal for Rwanda was not renewed, the decision not to renew the contract should be regarded as null and void. In these circumstances, the Tribunal wished to restore, to the extent possible, the situation of the Applicant to what it would have been if his contract had been renewed. This general principle establishing the parameters of the obligations arising from a finding of responsibility on the part of a subject of law was perfectly expressed in a well-known dictum of the Permanent Court of International Justice:

> "The essential principle contained in the actual notion of an illegal act — a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals — is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it" (Judgment in the *Case concerning the factory at Chorzów (Merits), 1928, P.C.I.J., Series A, No. 17,* p. 47).

Paragraph XXII of Judgement No. 1135, which the Tribunal has been requested to interpret, is particularly explicit with respect to the Tribunal's approach:

> "The conclusion reached by the Tribunal is that the action by the Registrar must be regarded as null and void, having been taken not only *ultra vires*, but in a particularly arbitrary manner. The situation of the Applicant should therefore be restored to what it would have been, if the illegal action by the Registrar had not taken place".

In other words, the Tribunal held that the Applicant should be awarded compensation equal to the sum he would have received if his contract had been renewed for a period of two years, meaning that the amount of such compensation should be neither lower nor higher than this sum.

VIII. The Applicant proposes an interpretation whereby this compensation would consist of a sum of money greater than what he would have received if his contract had been renewed for two years. This interpretation is confirmed, he says, "by the fact that the Tribunal decided explicitly not to recommend the reinstatement of the applicant or, for that matter, the payment of two years' salary, but instead simply ordered the payment of a compensatory amount". While this is indeed what the Tribunal did, it does not give grounds for the conclusions drawn by the Applicant; quite the contrary. It is true that the Tribunal did not order the Applicant's reinstatement, nor did it decide to award the compensation provided for in article 10 of its Statute, the amount of which may not, in principle, exceed the equivalent of "two years' net base salary". It did not do so because these decisions would have been inappropriate in view of the circumstances of the case. Reinstatement would have made no sense because it would have taken place seven years after the non-renewal of the Applicant's contract. But the maximum lump-sum compensation also seemed inappropriate, given the facts of the case, which made it an exception that warranted an award larger than this lump-sum amount. The grounds for awarding such higher compensation were amply spelled out in the Tribunal's lengthy (29-page) judgement and will not be repeated here in detail, since they included grievances relating to lack of competence, abuse of authority, the existence of motives extraneous to the interests of the service, defamation, falsification of documents and manipulation of the Applicant's file. The Tribunal will merely recall two unambiguous passages concerning the exceptional nature of the situation prevailing in the Administration of the International Criminal Tribunal for Rwanda at the time of the non-renewal of the Applicant's contract:

> "The Tribunal considers that the circumstances of the present case are sufficiently *unusual and exceptional* to justify not insisting on unduly strict compliance with the time limits" (para. VII) (emphasis added by the Tribunal).
>
> "What happened at Kigali was, however, so *unlike what may be expected of the administrative operation of the United Nations* that the Tribunal considers that it has the duty, if not to engage in a painstaking inquiry into everything that occurred, at least to examine the process leading to the non-renewal of the contract" (para. XVI) (emphasis added by the Tribunal).

IX. Although the compensation that the Tribunal decided to award the Applicant exceeds the maximum amount that he would have received under article 10 of the Tribunal's Statute, this in no way implies that the amount of compensation should exceed the sum that the Applicant would have received had he remained in the service of the International Criminal Tribunal for Rwanda for another two years.

X. Turning to the analysis of the text of its judgement in the light of the latter's object and purpose, the Tribunal points out that its use of the term "*salaire avec toutes les indemnités*" ("salary with all related allowances") instead of "*montant net du traitement de base*" ("net base salary") was neither accidental nor erroneous. Considering that the many and well-documented facts of the case warranted the payment of a sizeable sum by way of compensation, the Tribunal took care not to limit this amount to the net base salary, choosing instead to refer to the "salary" and adding "with all related allowances". This more inclusive expression was intended to cover all sums of money that the Applicant would have received if he had remained in his post, but nothing more. There are precedents in which the Tribunal decided not to refer to net base salary alone, but to award a supplementary amount of compensation, as in the *Dewey* case, for example:

> "... the Tribunal, finding that two years net base salary would not in this case adequately compensate the Applicant for the injury he has sustained, fixes the compensation to be paid to him as two years of his gross salary (without post adjustment or any other emoluments)" (Judgement No. 526 (1991), para. XXIX).

In that case, the Tribunal opted for the gross salary, but without the post adjustment; in the present case, the Tribunal, with a view to keeping the amount of compensation as close as possible to what the Applicant would have received for an additional two

years' service, opted for the net base salary plus the post adjustment and related allowances to which he was entitled, as will be explained in more detail.

XI. The salary received by United Nations staff is made up of two main elements: the net base salary and the post adjustment. The Tribunal's use of the term "salary" was intended to refer to both of these two elements. The International Civil Service Commission has indicated that:

> "Post adjustment is an amount paid *in addition to net base salary*, which is designed to ensure that no matter where United Nations common system staff work, their *net remuneration* has a purchasing power equivalent to that at the base of the system, New York" (emphasis added by the Tribunal).

The Tribunal cannot accept the interpretation which the Administration applies to this text in its answer — "[a]ccordingly, post adjustment constitutes neither salary nor an allowance, but rather is an amount paid in addition to salary to equalize standards of living among staff members" — and which it uses as a pretext for claiming that the post adjustment should not have been included in the calculation of the compensation payable to the Applicant and that this alleged overpayment is subject to recovery. While it is true that the post adjustment, unlike gross salary, is not subject to the deduction of staff assessment, it is also clear that the post adjustment, though not a component of base salary, is nonetheless an element of remuneration that enables the staff members receiving it to maintain a certain standard of living.

XII. As regards "all related allowances", the Tribunal used this broad expression without specifically enumerating the allowances concerned in order to include all allowances to which the Applicant could be entitled by reason of his family or professional circumstances, as the Tribunal was not familiar with the Applicant's administrative details. The meaning of the expression "salary with all related allowances" is thus perfectly clear and should not, in the Tribunal's opinion, have given rise to any interpretation. The Tribunal is satisfied that the Administration correctly understood the meaning of its decision and correctly calculated the amount of compensation payable thereunder. In its description of how the amount of compensation was calculated, the Administration indicates that the amount considered was "two years' salary with all allowances", in accordance with operative paragraph 3 of Judgement No. 1135. In calculating the total amount of compensation, it very rightly included two years' post adjustment and the hardship and non-removal elements

of the mobility and hardship allowance. This corresponds exactly to the Tribunal's intent with regard to the compensation to be paid to the Applicant; the Administration calculated the amount in such a way that the compensation paid is precisely equivalent to the sum that the Applicant would have received if he had remained in service for another two years. There are thus no grounds for granting the Administration's counterclaim for the recovery of part of this amount.

XIII. On a matter apart from the points at issue, the Tribunal also notes that the Administration correctly interpreted and implemented operative paragraphs 4, 5 and 7 of Judgement No. 1135, since it duly included in the calculation three days' salary to compensate the Applicant for previously unpaid work days (25-27 September), in implementation of operative paragraph 4, together with an extended installation grant, pursuant to operative paragraph 5, and the $5,000 compensation provided for in operative paragraph 7.

XIV. The remaining issue of interpretation concerns the amounts deducted by the Administration, which were of two types: staff assessment and the Organization's health insurance and pension fund contributions.

XV. With respect to the deduction of staff assessment, the Applicant challenges the Administration's decision, contending that the Tribunal's unqualified use of the term "salary" instead of "net salary" indicates that its intended meaning was "gross salary". Obviously, however, one could also, with as much — or as little! — conviction, reverse this inference and say that the Tribunal's unqualified use of the term "salary" instead of "gross salary" indicates that its intended meaning was "net salary"! It is abundantly clear that since the Tribunal intended to give the Applicant what he would have received if he had been employed for an additional two years, it could not have been referring to gross salary because this amount is never received by any staff member, as is clear from regulations 3.1 and 3.3 of the Staff Regulations:

> "Article III ...
>
> *Regulation 3.1*
>
> Salaries of staff members shall be fixed by the Secretary-General in accordance with the provisions of annex I to the present Regulations.
>
> ...

> *Regulation 3.3*
>
> (a) An assessment at the rates and under the conditions specified below shall be applied to the salaries and such other emoluments of staff members as are computed on the basis of salary, excluding post adjustments ...".

The Administration therefore acted correctly in paying the Applicant his net salary; i.e., gross salary minus staff assessment.

XVI. With respect to the Organization's contributions to benefit schemes in respect of the Applicant, the Tribunal cannot accept the Applicant's contention that "[t]here is no question that such contributions are part of the staff member's allowances and that they must not be deducted from the calculations". The Tribunal does not see how these amounts can be called allowances, since they are never paid to United Nations staff members. On this point, the Applicant refers to the aforementioned translation, in which the French expression "*deux ans de salaires avec toutes les indemnités*" was rendered as "net base salary, allowances and other entitlements", which could indeed leave room for ambiguity. Even if the English version can be interpreted to allow the salary to be inflated through the inclusion of contributions paid into health insurance and pension schemes (an issue on which the Tribunal will give no opinion), the Tribunal indicated at the beginning of the present judgement that in no case can an applicant justifiably take advantage of an approximation or error in a translation. The simple fact that the word "entitlements" was added in the translation does not mean that the "allowances" should be supplemented with other amounts representing the equivalent of potential or future material benefits such as access to health care or to a retirement pension. While the sums in question are indeed paid out by the Administration, they are contributions to special funds and are not defined as part of the allowances received by international civil servants. This is clearly apparent from the pay statements issued to staff members, which include three headings: "Earnings", "Deductions" and "Organization's Contribution". The items "Medical Insurance Subsidy" and "Organization's Pension Contribution" come under this last heading.

XVII. The Tribunal concludes that the Administration's interpretation of operative paragraph 3 of Judgement No. 1135 was perfectly correct and that the application for interpretation arose solely out of the Applicant's desire to obtain more than what had been awarded to him.

XVIII. The Tribunal turns next to what the Applicant calls an application for implementation, in which he refers to problems of implementation; more precisely, he complains that certain aspects of the Tribunal's decision have not been implemented. Specifically, the Applicant complains that the Administration has not paid him for the leave to which he was entitled and has not rectified his file by removing adverse items and returning favourable ones. In fact, this is also a matter of interpretation, this time in relation to operative paragraph 6 of Judgement No. 1135, which the Administration did not implement for the very reason that there were unresolved issues of interpretation. The Tribunal will therefore clarify the obligation referred to in operative paragraph 6.

XIX. The first issue concerns the obligation imposed on the Administration to include as part of the compensation payable to the Applicant the leave allowance to which he would have been entitled had he remained in his post; the Tribunal set out this obligation in operative paragraph 6 of Judgement No. 1135. The Applicant and the Administration have opposing views concerning the calculation of this leave entitlement. The Tribunal recalls that it stipulated that the leave in question was that to which the Applicant would have been entitled if the Administration had correctly applied the rules in force while the Applicant was still in his post. The Tribunal does not regard this obligation as ambiguous, but will nonetheless specify its scope in order to facilitate prompt implementation. The Applicant claims entitlement to a round-trip business-class air ticket for travel from Kigali to Montreal and back, in addition to his salary for three days' outward travel and three days' return travel. The Administration challenges this contention and calculates the Applicant's leave entitlement at $5,526, pointing out that at the time in question United Nations staff members were only entitled to "the least costly airfare structure regularly available or its equivalent" and that this amount is therefore "a reasonable computation of the home leave entitlement due to the Applicant". According to the record, it appears that the Administration has not implemented this paragraph concerning annual leave. This in no way justifies, in the Tribunal's view, the real or feigned indignation of the Applicant, who refers in his written observations to "schizophrenic, dilatory and irregular machinations"!

XX. In its Judgement No. 1135, the Tribunal held that the Applicant was entitled to home leave. It did not order the Respondent to *send* the Applicant on home leave; the decision was clearly intended for compensatory purposes. During the period of the Applicant's service at the International Criminal Tribunal for Rwanda, there was no

provision for the payment of a lump sum for home-leave travel; staff members' entitlement in this respect was established as the least costly airfare available. Consequently, given the need to quantify the home leave entitlement payable under Judgement No. 1135, the Applicant and the Respondent subsequently agreed on the sum of $5,526. The Tribunal deems this a reasonable agreement. It notes, however, that this amount of $5,526 has not yet been paid, and confirms that the Respondent is bound to pay this amount pursuant to Judgement No. 1135. Once it has done so, this aspect of the Tribunal's decision in Judgement No. 1135 will have been implemented.

XXI. In the present application, however, the Applicant claims that the Tribunal, in Judgement No. 1135, upheld his initial plea concerning his home leave as well as three days' travel time in each direction. According to his interpretation, the judgement awarded him six days' salary in respect of this travel time. The provisions concerning travel time in connection with home-leave travel are set out in document ST/AI/2000/20, "Official travel", of 22 December 2000:

> **"Section 6**
>
> **Travel time on home leave or family visit**
>
> 6.1 For travel on both the outward and the return journey on home leave or family visit, staff members shall be granted a fixed amount of travel time not chargeable to annual leave, determined on the basis of the most direct flight available as follows:
>
> (a) One day for each journey of less than 10 hours;
>
> (b) Two days for each journey of 10 hours or longer but less than 16 hours; and
>
> (c) Three days for each journey of 16 hours or more".

The provisions of document ST/AI/2000/20 create a benefit giving rise to an entitlement. The travel-time provision is expressly applicable to home-leave or family-visit travel and is logically intended to ensure that staff members do not have to deduct such travel time from their annual leave. In short, this enables staff members to effect their home-leave travel on the Organization's time ("travel time") instead of using their vacation days. If the Applicant had taken his home leave during the normal course of his employment, he undoubtedly would have been entitled to three days' travel time in each direction. He did not take this leave, however, and now he wants to be paid six days' salary as compensation for the symbolic loss of his travel time. This is a misinterpretation of the spirit of Judgement No. 1135, and the Tribunal holds that the

entitlement to travel time provided for in document ST/AI/2000/20 is not an allowance for the purposes of Judgement No. 1135.

XXII. On the issue of the documents that were to be removed from or returned to his file, the Applicant accuses the Administration of ill will — going so far as to speak, in a perfectly uncalled-for manner, of the Administration's "extreme bad faith and duplicity" — and requests, as compensation for what he refers to as the failure to fully implement the judgement, two years' salary, though without specifying whether it should be paid with or without allowances! An analysis of the record reveals, on the contrary, that the Administration has been extremely cooperative in carrying out this and other aspects of the judgement, as shown by the above-mentioned developments. The following message received from the Administration amply attests to its goodwill:

> "Dear …,
>
> First of all, let me apologize for the delay in providing you with the list of defamatory and forged document which had been removed from your file in ICTR.
>
> I am attaching the message below which provides the list. Kindly review it and let us know if it is in order. May be you can also assist us in ensuring 'all favourable items that had been removed from the file be returned to it'".

XXIII. The Tribunal therefore holds that there are no grounds for finding that the Administration has failed to perform its obligation to rectify the Applicant's file. If a few minor items are still missing, good-faith cooperation should enable the two parties to settle the issue.

XXIV. Lastly, the Applicant submits what he refers to as an application for revision of judgement asking the Tribunal to order a payment to offset the damages resulting from the failure to implement the judgement. Clearly, this does not involve the discovery of any new fact that existed but was unknown to the Tribunal at the time the judgement was given, which is the condition required for a revision of judgement. What the Applicant is asking the Tribunal to do is to pronounce a new judgement awarding him compensation equivalent to two years' salary — in the absence of any further details in his application, it must be surmised that he is not also requesting the payment of all related allowances — and payable "immediately, and/or failing that, to order the Administration to pay the Applicant a daily fine of $500 per day of delay in implementation". The Applicant further requests, also as part of the "revision", that

the Tribunal order the Respondent to pay him interest at a rate of 8 per cent on the total amount of compensation ordered by Judgement No. 1135, dating from the opening of his case before the Joint Appeals Board or, failing that, dating from the pronouncement of Judgement No. 1135. None of these requests fall within the scope of a revision.

XXV. For these reasons, the Tribunal:

1. Finds that the Administration has correctly interpreted operative paragraph 3 of Judgement No. 1135 and, consequently, has correctly calculated the amount of compensation payable to the Applicant;
2. Orders the Administration to pay the Applicant the sum of $5,526, representing the annual leave entitlement payable to the Applicant under operative paragraph 6 of Judgement No. 1135;
3. Rejects all other pleas.

(*Signatures*)

Julio **Barboza**
President

Spyridon **Flogaitis**
Vice-President

Brigitte **Stern**
Member

Geneva, 22 July 2005

Maritza **Struyvenberg**
Executive Secretary