United Nations AT/DEC/1229

Administrative Tribunal

Distr.: Limited
30 September 2005

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1229

Case No. 1239 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; Ms. Jacqueline R. Scott;

Whereas, on 14 May 2004, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP) 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. 1128, rendered by the Tribunal on 25 July 2003;

Whereas the Application contained pleas which read, in part, as follows:

"II. PLEAS

…

8. … [T]he Applicant most respectfully requests the Administrative Tribunal *to order*:

(a) that the Respondent either reinstate the Applicant or pay to the Applicant as damages the amount he would have received had he been reinstated in service, effective 1 July 2001.

(b) that the Applicant be awarded interest in the amount of 6% per annum from 30 October 2003 until the date the Judgement is fully and finally implemented, on any payments effected by the Respondent, in light of the egregious delays.

(c) … [that] the Applicant [be paid] as cost, the sum of $3,000 in legal fees and $500 in expenses and disbursements."

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 21 September 2004;

Whereas the Respondent filed his Answer on 21 September 2004;

Whereas the Applicant filed Written Observations on 13 December 2004;

Whereas the facts of the case subsequent to the statement of facts contained in Judgement No. 1128 are as follows:

On 30 September 2003, Judgement No. 1128 was distributed to the parties. On 3 February 2004, the Applicant wrote to the Secretary-General, stating, inter alia, that he had not yet been paid the compensation awarded to him by the Tribunal and that it was his understanding that since the Organization was in default of the Tribunal's binding order since 30 October 2003, that he "[stood] reinstated in service, retroactive to … 31 June [sic] 2001". The Applicant stated that if no response was received by 16 February, he would be initiating further proceedings. On 25 February, the Applicant was informed that in accordance with the Judgement, instructions had been issued for payment to him of US$ 191,622. On 27 February, the Applicant informed the Respondent that because the latter had not advised him of his decision within the 30 day period, it was the Applicant's understanding that the Respondent had opted for reinstating him and that a request for confirmation of this interpretation had been filed with the Tribunal. On 29 March 2004, the compensation payment was made to the Applicant's bank account.

Whereas the Applicant's principal contentions are:

1. The Respondent has misinterpreted and failed to properly and correctly implement the decisions of the Tribunal in Judgement No. 1128. This constitutes "new facts" which were unknown when the Judgement was rendered.

2. The plain meaning of the Tribunal's words in the order contained in Judgement No. 1128 is that unless a decision is conveyed within 30 days not to reinstate the Applicant, the Applicant is considered reinstated with all the entitlements and emoluments that pertain. This order has been undermined by the Respondent's subversion thereof.

3. There is no other remedy open to the Applicant or any other potential applicant whose award by the Tribunal is postponed gratuitously and indefinitely.

Whereas the Respondent's principal contentions are:

1. The Applicant failed to introduce any fact of a decisive nature, which was unknown to the Tribunal and to the Applicant at the time Judgement No. 1128 was rendered, and, accordingly, his request for a revision of the Judgement is without merit.

2. The Applicant's request for interpretation is without merit. The Applicant has fallen short of showing that the Judgement is ambiguous or indefinite in any respect and there is no dispute as to the meaning or scope of the Judgement.

3. The Applicant's case is not about the need to revise or interpret Judgement No. 1128, but rather about the delay in effecting payment of compensation ordered by the Tribunal.

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

I. The Applicant requests interpretation and revision of Judgement No. 1128 and, additionally, that this Judgement should be modified in the light of new information relevant to the case.

II. The Tribunal shall first examine the claim of revision. The Tribunal is satisfied that the present case is clearly not one of revision. The "new fact" required by the well-known article 12 of the Statute must be a fact unknown to the Tribunal and to the party making the request at the time the Judgement is rendered by the Tribunal, but which happened **before** it was handed down (see Judgements No. 303, *Panis* (1983) and No. 1120, *Kamoun* (2003)). The Applicant's only reference to such a fact is the Respondent's conduct with regard to implementation of the Judgement after it was rendered.

III. 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 a dispute as to the meaning or scope of the judgement. It recalls in this regard Judgement No. 61, *Crawford et al.* (1955):

> "Although the Statute of the Administrative Tribunal does not contain an express provision relating to the interpretation of judgements, … The Tribunal finds that the competence of national and international courts to interpret their own judgements is generally recognized. It notes that article 6 of the Rules empowers the President of the Tribunal to designate the members sitting in each case and that article 19 permits the Tribunal to vary any time-limit fixed by the Rules. The Tribunal therefore holds itself competent to consider the Motion requesting an interpretation of the judgements referred to … and declares that so far as the formal requirements are concerned, the Motion is receivable."

The Tribunal's jurisprudence on the matter of interpretation of judgements is guided by the principles of the International Court of Justice's Judgement in the "Asylum Case" (*ICJ reports*, *1950*, p. 402). According to that decision,

> "The real purpose of the request must be to obtain an interpretation of the Judgement. This signifies that its object must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided".

IV. What the Tribunal had ordered, in fact, is self-explanatory: either the Secretary-General would reinstate the Applicant or, pay a certain indemnity as compensation, should he decide, in the interest of the United Nations, that no further action be taken in the case. The Secretary-General's decision was to be taken within 30 days of the notification of the Judgement.

The Applicant, then, is not asking the Tribunal to interpret the meaning of that remarkably simple sentence. He requests the Tribunal to spell out what consequences fall on the Respondent for not having complied with that requirement.

The question presented by the Applicant, then, is not a question of interpretation; in the view of the Tribunal it is a new question and should be the subject matter of a new case if it is to be decided by it. Consequently, the Applicant should follow the normal appeals procedure; that is, request a review of the administrative decision and, if the request is denied, appeal to the Joint Appeals Board (JAB), unless the case is brought to the Tribunal under article 7 of the Statute, on agreed facts. (See Judgements No. 678, *Lukas* (1994); No. 723, *Bentaleb* (1995); and, No. 796: *Xu et al.* (1996).)

The Tribunal realizes that to restart the appeals process as mentioned above is time-consuming and it deplores that its Statute does not allow for direct submission of requests for implementation of judgement, such as the one posed by the Applicant. In

this regard, the Tribunal encourages the Administration to find ways to avoid the need for such tedious new litigation in the future. However, should this case come back to the Tribunal, it trusts that the case would be submitted on agreed facts, thereby obviating the time, delay and expense of a JAB.

V. Accordingly, the Application is rejected in its entirety.

(*Signatures*)

Julio **Barboza**
President

Kevin **Haugh**
Vice-President

Jacqueline R. **Scott**
Member

Geneva, 22 July 2005

Maritza **Struyvenberg**
Executive Secretary