



Administrative Tribunal

Distr.: Limited
30 September 2005

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1251

Case No. 1343

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, Vice-President, presiding; Ms. Jacqueline R. Scott; Mr. Goh Joon Seng;

Whereas at the request of 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 30 September 2003 and once thereafter until 30 November;

Whereas, on 27 November 2003, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 25 February 2004, the Applicant, after making the necessary corrections, again filed an Application, requesting the Tribunal:

- “1) That the decision of the Legal Liaison Office, [United Nations Office at Geneva (UNOG), rejecting] the Applicant’s request for reimbursement of motor vehicle tax imposed by the Swiss cantonal authorities ... be overturned; and,
- 2) That UNOG should be required to reimburse the Applicant for vehicle taxes he had paid for the years 1999-2004 (and which he will be required to pay in future), either from staff assessment funds or by applying to his case the special procedure devised for [United States nationals who are] staff of the United Nations.”

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 15 June 2004 and twice thereafter until 30 July;

Whereas the Respondent filed his Answer on 23 July 2004;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

“[The Applicant's] Professional Record

... The [Applicant served periodically with UNOG, initially as a Russian Translator and then as an Editor, from 10 November 1974 until 13 August 1990 on secondment from the Government of the Union of Soviet Socialist Republics (USSR). After his secondment ended, the Applicant continued to be employed on successive fixed-term contracts.]

... [After several reassignments] effective 1 January 1998 the [Applicant] was offered a permanent appointment as an Editor at the P-3 level, in the Conference Services Division, Language Service, where he is currently assigned.

Summary of Facts

... The [Applicant acquired Swiss nationality by naturalization] on 12 October 1992.

... By letter dated 15 December 2000 to the Senior Legal Officer, Legal Liaison Office, UNOG, the [Applicant] ... requested advice concerning his liability to pay the cantonal taxes for his private car or his possible eligibility for reimbursement of these taxes. ...

... In [his] response, ... dated 18 December 2000, the Senior Legal Advisor ... first recalled that ‘the Swiss “impôt sur les véhicules à moteur” is payable by any holder of a private car in Switzerland’ and that ‘only certain category [sic] such as United Nations high officials (P-5 and above), [were] exempt from paying the tax on private vehicles’, as provided for in the Host Country Agreement between the United Nations and Switzerland. He also informed the [Applicant] that the tax on vehicles could not be compared to the taxes on the earnings (‘taxation on the salaries and emoluments paid to them by the United Nations’) from which the United Nations staff is exempt. Finally, he specified that the use of [the Applicant's] car, may it be an official or a private use, had no relevance with regard to the principle of taxation.

... ... [O]n 22 February 2001, [the Applicant submitted] a formal request for reimbursement ...

...

... By memorandum dated 4 May 2001 to the [Applicant], the Senior Legal Officer ... stated *inter alia*:

‘The Swiss Government does not grant to its own citizens a number of privileges, immunities and facilities which it grants to international staff in general. ...

... I trust you understand that UNOG is in no position to challenge your legal duty to comply with the laws and regulations of your own Government, and that I am in no position to support your claim ... for reimbursement of your vehicle tax. I consider this matter as closed’.

... On 12 June 2001, the [Applicant requested] the Secretary-General to ... review ... the decision ... ‘to reject [his] request for reimbursement of tax and other withdrawals from [his] salary imposed by the Swiss Cantonal authorities’.

...

... By memorandum dated 8 August 2001 ... the Senior Legal Officer ... stated ... as follows:]

‘While the ... practice does indeed amount to a differentiated treatment between professional staff members of Swiss nationality and those of non-Swiss nationality, such a difference is firmly anchored in international law. ... The extension of privileges, immunities and facilities of a personal nature to their own nationals lies within the discretion of host countries’.

On 5 September 2001, the Applicant lodged an appeal with the JAB in Geneva. The JAB adopted its report on 12 November 2002. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

...

40. ... [T]he cantonal vehicle tax cannot be assimilated to the taxation on the salaries and emoluments paid by the United Nations as defined in the [Convention on the Privileges and Immunities of the United Nations] and therefore cannot be subject to an exemption nor to a reimbursement.

41. ... [T]he Panel also stressed that even if the Swiss Government, in accordance with longstanding practice, grants international staff in general certain privileges, such as an exemption of the cantonal vehicle tax, it however does not award such an exemption to its own nationals. ...

42. Given that he requested and acquired the Swiss nationality, the Appellant is therefore liable for the vehicle cantonal tax ...

Conclusions and Recommendations

43. In view of the foregoing, the Panel **concludes** that the Appellant has no grounds for contesting the refusal of the United Nations Administration to reimburse the vehicle tax he is liable to.

44. The Panel therefore **recommends** to the Secretary-General that the present appeal be **rejected**.”

On 1 April 2003, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General accepted the JAB's conclusions and, in accordance with its unanimous recommendation, had decided to take no further action on his appeal.

On 25 February 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The contested decision is inconsistent with the provisions of the Staff Regulations and Rules. It runs contrary to the principle of equal treatment and constitutes a discriminatory practice affecting staff members with dual nationality.
2. Staff members who are nationals of the United States and who pay taxes to their Government are then reimbursed for such payment by the Organization. A similar procedure should be put in place for reimbursement of Swiss staff members.

Whereas the Respondent's principal contentions are:

1. The status of the United Nations and its staff, and the privileges and immunities they may have, including cantonal and federal tax exemptions, are governed by the Agreement on Privileges and Immunities concluded between the Swiss Federal Council and the Secretary-General of the United Nations, on 19 April 1946.
2. The above-mentioned Agreement states that officials of the United Nations shall "be exempt from taxation on salaries and emoluments paid to them by the United Nations." The cantonal car tax is not a tax on the Applicant's salary or emoluments paid to him by the Organization and, therefore, there is no legal basis for claiming reimbursement.

The Tribunal, having deliberated from 28 June to 22 July 2005, now pronounces the following Judgement:

- I. The Applicant entered the service of UNOG in November 1974 as a Russian Translator, initially on secondment from the USSR. As of 1990, he was employed on successive fixed-term contracts, and effective 1 January 1998 he was offered a permanent appointment as an Editor at the P-3 level, in the Conference Services Division, Language Service, where he is currently assigned.

On 12 October 1992, the Applicant acquired Swiss nationality by naturalization and currently holds dual Russian and Swiss citizenship.

On 15 October 2000, the Applicant sought advice from the Senior Legal Officer, Legal Liaison Office, UNOG, on his liability to pay the annual tax on his private vehicle and his eligibility for reimbursement. On 18 December, he was advised that the Swiss vehicle tax is payable by any owner of a private car in Switzerland, and that only “United Nations high officials (P-5 and above) [were] exempted from paying the tax on private vehicles” as provided for in the Agreement on Privileges and Immunities between the United Nations and Switzerland. He was also advised that tax on vehicles, is not equivalent to tax on salaries and emoluments paid to staff members of the United Nations. On 22 February 2001, the Applicant formally requested reimbursement for his payment of this cantonal car tax. He contended that failure to reimburse him would violate the Staff Regulations and Rules as it would constitute “a discriminatory practice affecting staff members with dual nationality” as well as a breach of the principles of “equal treatment of staff carrying out the same functions” and of “equal pay for equal work”. The Applicant cited the system of “reimbursement of tax withdrawals from salaries or other emoluments” established by the General Assembly to compensate for the double taxation of staff members who are subject to national taxation on their salaries. On 4 May 2001, his request was turned down.

The JAB found that the cantonal vehicle tax cannot be treated in the same manner as taxation on the salaries and emoluments paid by the United Nations, as defined in the Convention on the Privileges and Immunities of the United Nations, and therefore such tax cannot be subject to an exemption or to a reimbursement. The JAB recommended that the appeal be rejected.

II. The Tribunal, having considered the documents before it, notes that the status of the United Nations and its staff, its privileges and immunities in Switzerland are governed by the Agreement on Privileges and Immunities. By Section 15 paragraph (b) of this Agreement, officials of the United Nations based in Switzerland shall “be exempt from taxation on salaries and emoluments paid to them by the United Nations”.

III. The Tribunal finds that as the cantonal vehicle tax is not “taxation on salaries and emoluments” paid by the Organization, the Applicant is not entitled to exemption from cantonal vehicle tax. Moreover, whatever exemption may apply to officials of the United Nations based in Switzerland at level P-5 and above would not apply to the

Applicant, as he holds a post at the P-3 level. Therefore, the Applicant is not entitled to reimbursement for his payment of cantonal vehicle tax.

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

(Signatures)

Spyridon Flogaitis
Vice-President, presiding

Jacqueline R. Scott
Member

Goh Joon Seng
Member

Geneva, 22 July 2005

Maritza Struyvenberg
Executive Secretary