

**Administrative Tribunal**

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1279

Case No. 1362

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. Dayendra Sena Wijewardane;

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 31 January 2004 and once thereafter until 30 April;

Whereas, on 20 April 2004, the Applicant filed an Application, requesting the Tribunal to order:

- “a) [That her] status be re-assessed and restored as per [her] original pre-employment offer of appointment; ... authorizing retroactive payment of [her] lost net base salary in dollars as it was before and should have been regardless of the devaluation of the local currency;
- b) [That she be] paid interest on the loss of earnings since 1991 to date on the outstanding amount;
- c) Restoration of [her] appropriate pension benefits ...;
- d) Restoration and retroactive payment of the difference in [her] pension contribution ...;
- e) ... [P]ayment of compensation for emotional damage and humiliation through all this period;

- f) ... [P]ayment of damages or any costs and time incurred in pursuing a solution to this issue since 1997 when I returned from Mission assignment to date; [or]
- g) Should the Tribunal decide that there is no breach of contract on the part of the United Nations, the Tribunal is requested to give special consideration to my pension benefits, since what I will be getting, come retirement after 25 years, would not be adequate for me and my family to live on."

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 28 February 2005;

Whereas the Respondent filed his Answer on 28 February 2005;

Whereas, on 3 June 2005, the Applicant filed Written Observations amending her pleas as follows:

"The Applicant requests the Administrative Tribunal to instruct the Respondent ...:

...

- C. To pay the Applicant an amount equal to three years' net salary as compensation for the failure to set her salary through the correct procedure."

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

"Employment History

... The [staff members who, together with the Applicant, filed the appeal to the JAB] were recruited between the mid-1970s and the early 1980s as International General Service (IGS) staff from various African countries for service with the Economic Commission for Africa (ECA) in Addis Ababa, Ethiopia. ...

... [The Applicant] was offered on 28 June 1979 a one-year [fixed-term appointment] as an English Secretary at the GS-7 level with

'Salary: US\$ 7,977 gross per annum which after deduction of ... staff assessment amounts approximately to a net base salary of US\$ 6, 483 per annum.

Non resident's allowance: The equivalent of US\$ 2,433 net per annum payable in Ethiopian Birrs.

Dependency allowance: US\$ 128 net per annum for each child to a maximum of six children.'

Her letter of appointment dated 2 October 1979 stipulated her assessable salary to be ‘\$ 17,080 gpa’.

[The Applicant’s fixed-term contract was extended thereafter. By letter of appointment dated 22 September 1981, her contract was renewed and the salary was specified in Ethiopian Birrs.]

[From 1992 to 1997, the Applicant served on mission with the United Nations Interim Mission in Lebanon (UNIFIL). She returned to ECA in October 1992.]

...

Summary of Facts

... By virtue of [her] appointment status as IGS, the [Applicant] received all allowances and benefits to which all internationally recruited staff were entitled, such as education grant and rental subsidy. However, [she was] not in receipt of any allowance such as post adjustment to offset increases in the cost of living. While [her initial letter] of appointment stated [her salary] in US dollars, [she was] remunerated on the same basis as local General Service staff and [her salary was] denominated and paid in Ethiopian Birr.

... Emoluments for ... IGS [staff members] were paid in the ratio of 20% in Ethiopian Birr and 80% in any other single currency, the amount of which was determined by applying the prevailing rate of exchange of Birr 2.05 = US\$ 1. That exchange rate ... remained in force for twelve years until October 1992, when the Birr was devalued against the dollar to 4.95 = 1.

... In a memorandum dated 14 January 1993 to [the] Under-Secretary-General for Administration and Management, [the] Executive Secretary, ECA, referred to the drastic effects of the devaluation of the Ethiopian Birr on the living and working conditions of the IGS staff in ECA, ... [and] proposed that

‘their salaries be converted to the Field Service salary scale ...’.

... In [his response of] 2 February 1993[, the Under-Secretary-General for Administration and Management] stated that ... ECA had failed to provide any documentation as justification for the payment in convertible currency of up to 80 % of the emoluments of IGS staff. [He] stated that:

...

‘[t]he Controller’s Office has ... authorized, on an exceptional basis, the utilization of the pre-devaluation exchange rate of Birr 2.07 to US\$ 1.00 in converting up to 30 per cent of the salaries of internationally recruited and locally recruited non-Ethiopian staff members in the General Service category at ECA, for a period of four months’.

As for the proposal to convert the salaries of the IGS staff in ECA to the Field Service salary scale, [he] stated that: ‘it would be premature at this stage in light of the far reaching implications for the entire common system’.

...

... Administrative instruction ST/AI/402 of 23 March 1995 entitled 'Currency of payment of salaries and allowances' provides, with respect to internationally recruited General Service staff serving in ECA, that they

'may receive a portion of their emoluments in the currency of their established country of residence, as follows: (a) 25 per cent of base salary if the staff member has no dependants or if the dependants reside at the duty station; or (b) 50 per cent of base salary if the staff member's dependants reside in the established country of residence'.

... In a memorandum dated 11 March 1997 to [the] Executive Secretary, ECA, the IGS staff in ECA recalled that, after the Birr was devaluated, '[their] salaries dropped to less than half the amount before devaluation, when converted to dollars'. ... They proposed several options for the Executive Secretary's consideration.

... In a memorandum dated 26 July 1997 to [the] Under-Secretary-General for Administration and Management, [the Executive Secretary, ECA,] ... proposed that the conditions of service, base salaries and other benefits of the IGS staff in ECA be studied and reviewed, future salaries of those staff members be paid in US dollars so as to be shielded from the effects of any further devaluation and fluctuation of the Ethiopian Birr, and the eleven remaining IGS staff at ECA be absorbed into the Field Service category ...

...

... In a memorandum dated 17 June 1998 [the Office of Human Resources Management (OHRM) advised ECA] that the letters of appointment of the IGS staff in ECA

'reflected salaries in local currency. It would have been more accurate if the offers of appointment mentioned that the salaries are expressed in United States Dollars, payable in local currency and subject to change based on the movement of the exchange rate.'

...

[OHRM] further stated that the salaries of the IGS staff in ECA 'are based on the Flemming principle which measures the best prevailing conditions of employment found locally. In addition, they are provided international expatriate benefits by virtue of their international appointment status' [and] rejected the suggestion to convert the IGS staff in ECA into the Field Service category."

On 16 March 1999, the Applicant, together with several colleagues, wrote to the Secretary-General requesting administrative review of the breach of their employment contracts, contending that their salary scales had been unilaterally changed from international to local level.

On 13 July 1999, the Applicant and a colleague lodged an appeal with the JAB in New York, on behalf of eleven staff members. The JAB adopted its report on 10

April 2003. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

...

26. Pursuant to staff rule 111.2 (f), the Panel decided to waive the time-limit so as to allow the present case to proceed on [the] merits. ... In its view, the one-month delay in filing an appeal was caused by exceptional circumstances beyond the control of the Appellants, and a waiver of the time-limit was warranted.

...

30. The Panel noted that, before they joined ECA as IGS staff in 1975 and 1979 respectively, [the Applicant and another staff member] received offers of employment that quoted their salaries in US dollars. (...) Their initial Letters of Appointment also referred to their salaries only in terms of US dollars. However, the salaries that they subsequently received were denominated and paid in Ethiopian Birrs. While it appeared to be the standard practice to pay the IGS staff such as the Appellants their salaries in Ethiopian Birrs, though they were expressed in US dollars, the Panel was surprised that the ECA Administration had failed to spell out this unusual feature of the salary payment in either the offers of employment or the letters of appointment. It was not clear what explanation, if any, the ECA Administration had subsequently given to the Appellants about the discrepancy between its promise to pay in US dollars and its actual payment in Ethiopian Birrs.

31. Nonetheless, there appeared to be no evidence to show that the payment of their salaries in Ethiopian Birrs had caused the Appellants any financial harm. In that connection, it was noted that the total amount expressed and paid in Birrs was equivalent to the amount in dollars at a rate of 2:05 (later 2.07): 1, which remained stable for years until 1992. It was also noted that the Appellants had had access to up to 80 % conversion facility despite the authorization to pay them in convertible currency of only up to 30 % of the emoluments. ...

32. Moreover, there was no evidence indicating that any of the eleven Appellants had raised the issue of the omission on the part of the ECA Administration, or the Birr currency used to pay their salaries before 1992, when they began to experience the drastic effects of the devaluation of the Birr on the value of their salaries in terms of US dollars.

33. The Panel was not certain whether the failure on the part of the ECA Administration to fully spell out what appeared to be the standard practice of the Organization in respect of the currency used to pay the salaries of the IGS staff in ECA constituted an actionable cause, or for that matter, a breach of contract. However, even assuming that it had been a valid cause of action, the Panel believed that the time for launching such an action was not now, but at the time of their recruitment and/or after they had received their salaries in Ethiopian Birrs. The Panel was of the view that, by expressing no objection when they should have done so, the Appellants had failed to exercise their right to appeal in a timely manner. There was no evidence - none was offered

by the Appellants - of exceptional circumstances that had prevented them from earlier challenging the ECA Administration which was paying their salaries in Birrs and not dollars as promised.

...

36. ... [T]here was ... evidence indicating that the Administration had made good faith and active efforts to mitigate the effects of the Birr devaluation on the living conditions of ECA staff, including the Appellants. ... It had ... increased the salaries of the General Service staff in ECA including the Appellants by more than 99% between January 1999 and March 2001 ...

37. While it felt unable to support the request of the Appellants, the Panel expressed great concern over the potential impact of the pension situation on the Appellants and their families. In its view, the Organization, as a good employer, should consider taking certain measures with a view to finding equitable solutions enabling the Appellants to maintain a reasonable standard of living in their home countries after retirement.

Conclusions and recommendations

38. In light of the foregoing, the Panel *unanimously agreed* that, although the Appellants were one month late in submitting their appeal [to the JAB], the exceptional circumstances of the case justified a waiver of the time-limit.

39. In substance, the Panel *unanimously agreed* that the Appellants failed to demonstrate that the Respondent had committed a breach of their contracts, that they had failed to exercise their right to appeal in a timely manner [by initiating proceedings upon their initial recruitment, or when they first received their salaries in Birrs], and that there was no evidence of exceptional circumstances preventing them from pursuing that claim earlier.

40. The Panel makes no recommendation in respect of the present appeal."

On 6 August 2003, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed her as follows:

"The Secretary-General has decided to accept the unanimous conclusion of the Board and to take no further action on your appeal. Sharing the concern expressed by the Board concerning the pension situation, the Secretary-General wishes further to inform you that the issue of local salary problems in duty stations affected by the devaluation in local currencies, such as Addis Ababa, Ethiopia, has been taken into consideration in the revised salary survey methodology, which will come into effect on 1 January 2004. As regards the effect of these problems on the pension, please be advised that the Secretary-General has requested his representatives in the Pension Board to raise this issue ..."

On 20 April 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The United Nations breached its contractual obligations towards the Applicant by changing her conditions of service from those of an IGS staff member to those of a local recruit.
2. The Applicant's earnings are less at the time of application than she received in 1979, and her pension has been significantly affected.

Whereas the Respondent's principal contentions are:

1. The Applicant's claims are time-barred and thus not receivable. The Applicant has cited no extraordinary circumstances that would warrant a waiver of the time limits.
2. The payment of the Applicant's salary in local currency did not constitute a breach of her contract: the Applicant did not have a right to remuneration in United States dollars.
3. The payment of the Applicant's salary in local currency was consistent with the Organization's policy that IGS are remunerated on the same basis as locally recruited General Service staff. This policy never changed throughout the Applicant's service with ECA.

The Tribunal, having deliberated from 3 to 23 November 2005, now pronounces the following Judgement:

I. The facts of this case as found by the JAB are not in dispute. The Applicant entered the service of ECA in Addis Ababa, Ethiopia, on 22 September 1979, as an IGS staff member with a two-year fixed-term contract as an English Secretary at the GS-7 level. She remained in service until her retirement in November 2004.

The Applicant's salary was stated in her initial letter of appointment in United States dollars; however, upon her entry into service her salary was calculated on the basis of the local currency, the Ethiopian Birr. As from 22 September 1981, when her next fixed-term contract went into effect, the denomination of her salary was stated as Ethiopian Birr. Nonetheless, as an IGS staff member, the Applicant was permitted to receive part of her salary in foreign currency. The record reflects that, until 1993, she was paid 30% of her salary in Ethiopian Birr and the remaining 70% in a different currency. Indeed, it was common practice at ECA for IGS staff members to have the

option of converting up to 80% of their salaries into any single other currency of their choice, frequently United States dollars, at an exchange rate fixed by ECA. That exchange rate against the dollar remained stable until October 1992; thereafter the Ethiopian Birr began to devalue significantly.

In 1990, the post adjustment and non-resident allowance paid to IGS staff members were cancelled and ceased to be paid. The Applicant submits that she started questioning that removal when, in 1991, she was assigned to go on mission with UNIFIL. In her Application to the Tribunal, the Applicant explains:

“It was upon my return to UNECA in October 1997 that I got the shock of my life when I discovered that I was receiving a net base monthly salary of less than \$914 per month. My salary was denominated in local currency, and converted to US dollars, contrary to the original letter of appointment.”

On 16 March 1999, the Applicant requested administrative review of the alleged change of her salary scale to that of locally recruited staff members; the payment of her salary in Ethiopian Birr rather than in United States dollars; and, the fact that in 1990 the payment of post adjustment and non-resident allowance was discontinued. On 13 July 1999, she appealed to the JAB.

II. The appeal to the JAB was not made in a timely manner as it was filed over five months after the date of her request for administrative review. However, the panel decided, pursuant to its legal right, to waive the time-limit for submission of the appeal to the JAB and to consider the merits of the case. When the JAB pronounced its conclusions and recommendations, it unanimously agreed that the Organization had committed no breach of contract and that, in any event, the Applicant had failed to initiate her request for administrative review within the prescribed time limits.

III. The Tribunal is profoundly troubled by the Applicant’s situation, and it notes that many members of the Administration, including the Respondent, expressed concern for, and possible solutions to, her predicament. However, it is bound to observe that the Applicant has demonstrated a flagrant failure to defend any of the rights to which she thinks she is entitled in accordance with the applicable statutory time limits.

First, it is obvious that the Applicant’s salary was calculated in Ethiopian Birr for years before she went on mission, without her initiating any legal challenge.

Moreover, when her post adjustment and non-resident allowance were cancelled and ceased to be paid in 1990, she again failed to question that decision in a timely manner. Thereafter, when she returned to Addis Ababa in 1997, and immediately discovered - by her own admission - what she thought was a problem, she still did nothing for almost two years. Finally, the Applicant again failed to act within the relevant deadlines in the period between filing her request for administrative review and submitting her appeal to the JAB, which would have further prejudiced her case had the latter not waived that particular time limit.

The Tribunal has repeatedly expressed its concern about difficulties faced by staff members in retirement. That sympathy, however, must be balanced against the need for procedural order. In Judgement No. 1241 (2005), the Tribunal stated “[n]o matter what sympathy one might have for anyone who retires and then cannot enjoy the privileges of a life’s work, the Tribunal notes that deadlines are in the public interest and must be respected at all times”.

In administrative justice, time limits for exercising a right of appeal are set in the public interest and sympathy alone cannot waive them. The Tribunal is constrained by very short time limits in which any staff member who feels that some injustice was committed against his interests is bound to act. The Tribunal has consistently applied this rationale. In Judgement No. 498, *Zinna* (1990), it noted that “[n]o justification can be found for an applicant, who thinks he is being victimized, to wait for years and years before resorting to the proper procedural steps”, and in Judgement No. 549, *Renninger* (1992), the Tribunal found “[o]ne acts at one’s own peril after a claim arises by unreasonably delaying appropriate steps for vindication of the alleged right”.

More recently, in Judgement No. 1046, *Diaz de Wessely* (2002), the Tribunal stated:

“In the Tribunal’s view, it is of the utmost importance that time limits should be respected because they have been established to protect the United Nations Administration from tardy, unforeseeable requests that would otherwise hang like the sword of Damocles over the efficient operation of international organizations”.

Finally, in Judgement No. 1106, *Iqbal* (2003), the Tribunal “reiterate[d] the importance it attaches to complying with procedural rules, as they are of utmost importance for ensuring the well functioning of the Organization”.

IV. In view of the foregoing, the Tribunal will not enter into the substance of the case and the Application is rejected, in its entirety, as time-barred.

(Signatures)

Spyridon **Flogaitis**
Vice-President, presiding

Jacqueline R. **Scott**
Member

Dayendra Sena **Wijewardane**
Member

New York, 23 November 2005

Maritza **Struyvenberg**
Executive Secretary