

Judgement No. 61

Cases Nos. 26 : Crawford	Against: The Secretary-General
37 : Gordon	of the United Nations
38 : Svenchansky	
39 : Harris	
40 : Eldridge	
41 : Glassman	
42 : Older	
43 : Bancroft	
44 : Elveson	
45 : Reed	
46 : Glaser	

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. Sture Petré, Vice-President ; Mr. Omar Loutfi ;

Whereas the Applicants filed a Motion with the Tribunal on 21 October 1955 requesting interpretation of Judgements Nos. 18, and 29 to 42 ;

Whereas the Respondent filed his answer on 7 November 1955 ;

Whereas the Tribunal heard the parties in public session on 22 November 1955 ;

Whereas the facts as to the Applicants are as follows :

On 21 August 1953, the Tribunal rendered Judgements Nos. 18 and 29 to 38 ordering the payment of arrears of salary to the Applicants "less the amount paid at termination in lieu of notice and less also the amount of termination indemnity" "up to the date of this judgement" (in Judgements Nos. 29, 31 and 33 to 37 where the Applicants had not requested reinstatement) and "up to the date of reinstatement" (in Judgements Nos. 18, 30, 32 and 38 where the Applicants had requested it) and of \$300 costs. The Tribunal, at the request of the Applicants, ordered the payment of various awards in lieu of reinstatement in Judgements Nos. 29, 31 and 33 to 37, and ordered reinstatement in the four cases where it had been requested (Judgements Nos. 18, 30, 32 and 38). On 2 September 1953, the Secretary-General, in the exercise of his authority under article 9 of the Statute of the Tribunal, notified the Tribunal of his decision not to reinstate the Applicants in the cases dealt with in Judgements Nos. 18, 30, 32 and 38. Consequently, the Tribunal on 13 October 1953 rendered Judgements Nos. 39 to 42 ordering the payment of "full salary until the date of this [new] judgement" and various awards in lieu of reinstatement. In February 1955, the

Secretary-General paid to the Applicants the amounts awarded in lieu of reinstatement and costs ordered in the judgements. He also paid them arrears of salary, deducting in each case the amounts paid in lieu of notice which the Applicants had received at termination and the amount of termination indemnity. In application of Judgements Nos. 29, 31 and 33 to 37, the arrears of salary were reckoned up to 21 August 1953. In application of Judgements Nos. 18, 30, 32 and 38, combined with Judgements Nos. 39 to 42, the arrears of salary were reckoned up to 13 October 1953. Before accepting payment, the Applicants notified the Legal Counsel of the United Nations, by letter dated 9 February 1955, that they reserved the right to make an application to the Administrative Tribunal relating to the reimbursement of taxes which the United States taxes on the awards in lieu of reinstatement and interpretation of the four judgements handed down on 13 October 1953. On 21 October 1955, the Applicants filed a Motion with the Tribunal requesting:

(a) A construction of the 21 August 1953 and 13 October 1953 judgements which would require the Secretary-General to reimburse the Applicants concerned for any taxes which they are required to pay under American law on the awards in lieu of reinstatement;

(b) That the Secretary-General be instructed to comply with the judgements of 13 October 1953 by remitting the Applicants concerned the amounts deducted from their awards;

Whereas the Applicants' principal contentions are:

*On reimbursement of United States taxes
on amounts awarded in lieu of reinstatement*

1. The Tribunal intended the awards in lieu of reinstatement to represent a net or irreducible compensation to the Applicants for the injuries caused them by the termination of their employment. The payment of United States taxes would reduce the amount to which the Applicants were ultimately entitled and thus deprive them of full compensation.

2. The Tribunal could not have intended, in its awards, to discriminate between American nationals and those of other countries. A reduction of these awards—by the Applicants' payment of United States taxes—would have the effect of placing the Applicants in a position inferior to that of nationals of other countries awarded compensation by the Tribunal in lieu of reinstatement, since only the United States taxes its nationals who are employed by the United Nations. For example, in the Howrani case, the award made by the Tribunal in 1951 in Judgement No. 11 represented a net benefit to the Applicant, who was not an American citizen. On the other hand, in the Keeney case, the Applicant, who was an American citizen, was awarded damages in Judgement No. 12 which the United Nations

paid in full together with the federal tax on the award. The Applicants request that the precedent thus established by the Respondent should also be applicable to them.

3. The Tribunal could not have intended to discriminate among the American Applicants. The award it made in Judgement No. 42 will not be taxable under American law because the Applicant did not have a permanent contract with the United Nations and the award received would not therefore constitute damages for breach of an employment contract. The Tribunal surely did not mean that Applicants with permanent contracts should be treated differently.

On interpretation of Judgements Nos. 39 to 42 of 13 October 1953

4. The four Applicants concerned contend that, since they had applied for reinstatement and since the application was upheld by the Tribunal and refused by the Secretary-General, they are entitled to greater benefits than those staff members who had elected compensation in lieu of reinstatement. This position was supported by the 13 October 1953 judgements, e.g., in Judgement No. 39 the Tribunal declared that "the injury to be indemnified is that which results from the Secretary-General's refusal to reinstate."

5. The Secretary-General, in making payments in February 1955, did not make payment of "full salary until the date of this judgement" as ordered in Judgements Nos. 39 to 42. Instead, he complied with the original judgements (Nos. 18, 30, 32 and 38 of 21 August 1953) by deducting "the amount paid at termination in lieu of notice and . . . also the amount of termination indemnity". Moreover, the Secretary-General went even beyond this. In giving effect to judgement No. 41, Glaser, he applied the deductions against the award in lieu of reinstatement and costs so that the Applicant, after the October judgement, was paid a sum inferior to the amount awarded in lieu of reinstatement.

6. The Applicants submit that the Secretary-General was in error in making deductions in the four cases since the 13 October 1953 judgements did not so direct.

Whereas the Respondent's answer is :

*On reimbursement of United States taxes
on amounts awarded in lieu of reinstatement*

1. The amounts awarded in lieu of reinstatement were intended by the Tribunal as liquidated damages which, together with the other payments awarded, were meant as a final settlement of the rights of the parties. Thus, the awards in lieu of reinstatement are not subject to staff assessment under Staff Rule 103.17 and consequently no income tax reimbursement, in case taxes have to be paid, need be considered.

2. The Respondent believes that the Tribunal has indicated its intention that tax reimbursement should not be paid on the awards in lieu of reinstatement, not only by its total silence on the matter of reimbursement but also by the fact that the Tribunal expressly referred to gross salaries and quite clearly used them in calculating the awards. If the Tribunal should direct income tax reimbursements on top of awards of gross salaries, it would be giving several of the Applicants more money than they would have received had they continued in the service of the United Nations for the periods for which the Tribunal found they had an expectancy. Awards of this kind would have no basis in ordinary breach of contract, but would have a punitive character. The Tribunal could not have intended to award punitive damages, which it has no competence to do under its Statute; it is limited by Article 9 to fixing "compensation...for the injury sustained".

3. The Respondent refutes the Applicants' claim that denial of tax reimbursement would constitute a discrimination against them and against all applicants of United States nationality. The question now before the Tribunal is not whether reimbursement should ever be paid on any awards, but whether it should be paid on these particular awards, fixed in the light of the factors mentioned in the judgements. Whenever the question of tax reimbursement will arise respecting awards to applicants of any nationality, it will have to be solved by examination and analysis of the particular judgements involved.

4. There is no "discrimination" by the Administration when a difference in treatment is indicated by the Tribunal itself. In this connexion, the Respondent denies that the Keeney case is a parallel. Judgement No. 12 was executed by the Respondent in the sense that the award was considered the equivalent of a termination indemnity which is recognized as subject to staff assessment and tax reimbursement. It is therefore evident that this case could not be a precedent binding upon the Respondent and that in any event this was merely a matter of administrative procedure.

On interpretation of Judgements Nos. 39 to 42 of 13 October 1953

5. The judgements of 13 October 1953 do not rescind those of 21 August 1953 and it is doubtful that rescission would be possible under the Statute. The only course is to construe the two sets of judgements together and to apply the deductions, which under the August judgements were to apply to "full salary up to the date of reinstatement", to the awards under the October judgements which granted an equivalent of reinstatement.

6. The Respondent does not agree to the Applicants' view that the Applicants who requested reinstatement "were entitled to greater benefits" than those who did not, and points out in this connexion that

the factors enumerated as the basis of the awards made on 13 October are exactly similar to those referred to in Judgements Nos. 18, 30, 32 and 38 handed down on 21 August 1953 in the case of the Applicants who elected compensation in lieu of reinstatement. The only difference between the two sets of cases was that the October ones waited longer for settlement of the rights involved, and this delay was compensated for by the award of back salary up to 13 October.

7. With regard to the carrying out by the Respondent of Judgement No. 41, Glaser, where the Applicant after the judgement was paid less than the amount awarded in lieu of reinstatement, the Respondent points out that this occurred because the Applicant was terminated only in May 1953, and hence had less back salary than the other Applicants. If she had been reinstated on 13 October 1953 she would, under the August judgement, have owed the United Nations about \$1,000, since her termination indemnity and notice payment were that much larger than her back salary. This being the situation in the event of reinstatement, it was only reasonable to make the same deduction from the award in lieu of reinstatement.

The Tribunal having deliberated until 2 December 1955, now pronounces the following judgement:

1. The Applicants have submitted to the Tribunal a Motion requesting an interpretation of Judgements Nos. 18 and 29 to 38 rendered on 21 August 1953 and of Judgements Nos. 39 to 42 rendered on 13 October 1953.

Although the Statute of the Administrative Tribunal does not contain an express provision relating to the interpretation of judgements, both Parties agreed during the oral proceedings to admit that competence to interpret was inherent in the judicial function which the International Court of Justice, in its advisory opinion of 13 July 1954, declared the Tribunal to possess.

The Parties have further agreed that the Tribunal, constituted as stated above, is competent to interpret the judgements in question.

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 above and declares that so far as the formal requirements are concerned, the Motion is receivable.

2. The Applicants request, in the first place, an interpretation of Judgements Nos. 29, 31, 33 to 37 and 39 to 42 so far as they relate

to the award to the Applicants of compensation in lieu of reinstatement.

They contend that in rendering these judgements, the Tribunal intended these awards to represent a net and irreducible compensation for the injuries caused by their dismissal. Consequently, they claim, the Secretary-General was bound by virtue of these judgements to reimburse to the Applicants the amount of any tax payable by them under United States laws in respect of the awards of compensation.

Relying on the terms of the judgements and the method of computing the awards followed by the Tribunal, the Respondent argues that he does not consider himself bound to reimburse any amounts that might be payable as tax. He maintains that the Motion on this point is not a request for interpretation of past judgements, but rather a request for new judgements making large supplementary awards to the Applicants.

3. The International Court of Justice (Asylum case [interpretation], *ICJ Reports, 1950*, p. 402) has laid down the conditions in which it can take action on a request for interpretation as follows :

“(1) 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. Any other construction of Article 60 of the Statute would nullify the provision of the article that the judgement is final and without appeal.

(2) In addition, it is necessary that there should exist a dispute as to the meaning or scope of the judgement.

To decide whether the first requirement stated above is fulfilled, one must bear in mind the principle that it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions.”

The Court added (*loc. cit.*, p. 403) :

“Interpretation can in no way go beyond the limits of the judgement, fixed in advance by the Parties themselves in their submissions.”

The Tribunal considers that it should be guided by these general principles regarding the interpretation of judgements.

4. The Tribunal notes that, in the course of the proceedings resulting in the judgements for which an interpretation is now requested, the Applicants did not submit any claim for reimbursement by the Respondent of any United States tax which might be payable on the amounts of compensation under article 9 of the Statute of the Tribunal.

Consequently, the question whether the Respondent might have an

obligation in this respect over and above the obligation to pay compensation in lieu of reinstatement was never discussed in the original hearing before the Tribunal.

By applying to the Tribunal for a ruling on this point in the form of an interpretation, the Applicants are seeking a decision on a new question not previously submitted to the Tribunal and not an interpretation of the aforementioned judgements, the limits of which were fixed in advance by the submissions of the Parties.

5. The Tribunal therefore finds that the Motion requesting interpretation of Judgements Nos. 29, 31, 33 to 37 and 39 to 42 so far as they awarded compensation against the Respondent in lieu of reinstatement is not receivable.

6. Secondly, the Tribunal has before it a request for the interpretation of the judgements rendered on 13 October 1953 (Nos. 39 to 42) in favour of Mrs. Eldridge, Mr. Svenchansky, Mrs. Glaser and Miss Crawford so far as these judgements ordered the payment to each Applicant of "full salary until the date of . . . (the) judgement."

The Applicants contend that, instead of making payment of full salary as prescribed by the judgements of 13 October 1953, the Respondent complied with the judgements rendered on 21 August 1953 by wrongly deducting "the amount paid at termination in lieu of notice and . . . also the amount of termination indemnity" from the salary. He even applied those deductions against costs and against the compensation awarded in lieu of reinstatement, so that in Mrs. Glaser's case the full amount of the compensation was not paid. They claim that the judgements of 13 October 1953 should be construed as requiring full payment of salary up to 13 October 1953.

The Respondent contends that the judgements of 21 August and of 13 October 1953 should be construed together, since the former were not rescinded by the latter. Hence, the Applicants are not entitled to retain the termination indemnities and payments in lieu of notice which had been paid to them on the theory that the original terminations were valid, when in fact they have been held invalid by the Tribunal.

7. The Tribunal finds that the argument between the Parties relates to an issue which the Judgements Nos. 39 to 42 decided with binding force. The Tribunal is consequently under a duty to give an interpretation.

The Tribunal points out that the judgements of 13 October 1953 were rendered in accordance with article 9 of its Statute as drafted at that date :

"If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked; but if, in exceptional circumstances, such rescinding or specific performance is, in the opinion of the Secretary-General, impossible or inadvisable, the

Tribunal shall within a period of not more than sixty days order the payment to the applicant of compensation for the injury sustained.”

In consequence of this provision, the Tribunal had to give two rulings on the legal consequences of its findings with reference to the validity of the application. The Statute does not say that the second judgement rescinds or supersedes the first. That being so, the Tribunal's second judgement must be regarded as having no object other than to award compensation in respect of that part of the first judgement which cannot be carried into effect.

In its judgements of 21 August 1953, the Tribunal declared the decision regarding termination to be “illegal” (Judgements Nos. 18, 30 and 32) and “the application to be well-founded” (Judgement No. 38). It then went on to give a ruling on the claims for compensation “up to the date of reinstatement” and on costs.

In its judgements of 13 October 1953, the Tribunal confined itself to considering “the injury... which results from the Secretary-General's refusal to reinstate” the Applicants. Accordingly, those judgements do not affect that section of the operative part of the judgements rendered on 21 August which related to compensation and costs.

That being so, the Tribunal decides that the sum paid in lieu of notice and the amount of the termination indemnity are properly deductible from the arrears of salary up to the date of Judgements Nos. 18, 30, 32 and 38 rendered on 21 August 1953.

Under the terms of the judgements of 13 October 1953, each Applicant is also entitled to “full salary up to the date of this judgement.”

As the Tribunal had already given a ruling on the payment of arrears of salary up to 21 August 1953, its judgements of 13 October 1953 were clearly concerned solely with arrears of salary for the period between 21 August and 13 October 1953.

8. With regard to Judgement No. 41 rendered on 13 October 1953 in favour of Mrs. Glaser, the Motion states that, in deducting the sums paid in lieu of notice and as termination indemnity not only from the arrears of salary payable by the Respondent but also from the costs and the compensation awarded in lieu of reinstatement, the Respondent has disregarded the terms of the judgement.

The Respondent explains that it was logical to deduct these sums from the compensation in lieu of reinstatement, since they would have been deducted from Mrs. Glaser's salary, had she been reinstated.

9. The Tribunal notes that the payment made to the Applicant at the time of her termination was so made in pursuance of the provisions of the Staff Regulations and Rules relating to terminations by the

proper procedure. In declaring the termination illegal, the Tribunal removed the reason for this payment.

This reason did not revive in consequence of the Secretary-General's decision not to give effect to the judgement declaring the termination illegal and ordering reinstatement. Accordingly, Mrs. Glaser's services were not terminated by virtue of the provisions of the Staff Regulations, but in consequence of the application of the Statute of the Tribunal, as enacted by the General Assembly. In those circumstances, in evaluating the total injury resulting from the termination, the Tribunal is not bound by the provisions of the Staff Regulations relating to notice and termination compensation.

The judgement of 13 October 1953 could not have the effect of cancelling the debt which remained due by the Applicant in consequence of the judgement of 21 August 1953. Thus, the Respondent could, in the particular circumstances, effect a set-off of two debts resulting from Tribunal judgements in one and the same case.

10. The Tribunal consequently decides :

- (i) That the termination indemnity and the sums paid in lieu of notice are properly deductible from the arrears of salary awarded to the Applicants by the Tribunal in its judgements of 21 August and 13 October 1953 ;
- (ii) that, to the extent to which the sums to be deducted exceed the arrears payable by the Respondent, these sums may be deducted from the costs and from the indemnity in lieu of reinstatement which were held to be payable by the Respondent in the judgements of 21 August 1953 and 13 October 1953.

(Signatures)

Suzanne BASTID
President

Sture PETRÉN
Vice-President

Omar LOUTFI
Member

Mani SANASEN
Executive Secretary

New York, 2 December 1955
