

Judgement No. 163

(Original: English)

Case No. 134:
Touhami

Against: The Secretary-General
of the United Nations

Request for revision of Judgement No. 146.

In substance the application is for the revision of Judgement No. 135.—Applicant's alleged discovery of a memorandum.—Article 12 of the Statute of the Tribunal.—Mandatory nature of the time-limits fixed in that article.—The application for revision is not receivable, because it was not made within one year of the date of the Judgement concerned in substance.—It is not necessary to consider the authenticity or legal effect of the alleged memorandum, both of which are questioned by the Respondent.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Zenon Rossides;

Whereas, on 9 August 1971, the Applicant filed with the Tribunal an application requesting, under article 12 of the Statute, revision of Judgement No. 135 rendered in his case on 26 October 1970;

Whereas the Applicant's requests for revision of Judgement No. 135 were as follows:

"The revision I am requesting must include the following points:

"(a) My permanent reinstatement with UNDP Office in Rabat since 30 November 1967 with payment of my salary retroactive to that date including all appropriate advancements and legal interests;

"(b) The restitution of the five steps which have been taken wrongly and forcefully from my originally agreed upon grade;

"(c) The reimbursement of 1,000 Dirhams borrowed by the Deputy Resident Representative which I had paid on his behalf;

"(d) The most severe sanctions against UNDP elements who were in the Rabat Office."

Whereas, on 1 October 1971, the Tribunal rejected the application by its Judgement No. 146 in which it held that in the absence of the discovery of some fact of a decisive nature unknown to it and to the Applicant when Judgement No. 135 was given, it could not revise the said Judgement;

Whereas, on 28 August 1972, the Applicant filed with the Tribunal an application requesting revision of Judgement No. 146 under article 12 of the Statute;

Whereas the application specified that "the revision must include points (a), (b), (c) and (d)" of the first application for revision, quoted above, and referred *inter alia* to "the new discovery of two elements which are of the most decisive

nature in my case which are: a copy of a document revealing undeniably the truth with regard to the contested agreement and, the fundamental principles of international law provided for in the United Nations Charter which may be summarized as the following . . .”;

Whereas the document referred to above read as follows:

“Per. Touhami

1 September 1966

“*For the file*

“After tough negotiations with Mr. Ahmed Touhami ex-employee of the American Embassy in Rabat:

“1. It is understood that Mr. Touhami resigned his indefinite appointment with the said Embassy at our demand; on the understanding that he shall be employed permanently by the UNDP office in Rabat Morocco; regardless of the three-month initial appointment he has already signed as a matter of formality;

“2. After consultation with New York Hq: it has been authorized that Mr. Touhami’s starting grade shall be fixed at level five step six (5/VI) of the salary scale in force in order to meet his inflexible demand of Dh 1,200 per Month.

“I do solemnly affirm that the above agreement has taken place between myself and Mr. Touhami our new accountant.

“H. Nabulsi

“Resident Representative, a.i.”;

Whereas, on 19 September 1972, the Respondent submitted observations in which he questioned the receivability of the application “because almost two years have passed since the date of judgement sought to be revised and because the application does not make it possible for the Tribunal to ascertain whether it was made within thirty days of the alleged discovery”, as well as the “proof and significance of the allegedly newly discovered fact”;

Whereas, on 26 and 28 September 1972, the Applicant submitted comments on the Respondent’s observations;

Whereas the facts in the case are set forth in Judgement No. 135;

The Tribunal, having deliberated from 26 September to 11 October 1972, now pronounces the following judgement:

I. Though the Applicant purports to seek revision of Judgement No. 146 dated 1 October 1971, in substance his application filed on 28 August 1972 is for the revision of Judgement No. 135 rendered on 26 October 1970 which rejected the Applicant’s appeal from the Respondent’s decision not to extend his employment beyond his second fixed-term appointment. It may be noted that Judgement No. 146 merely rejected the Applicant’s request for revision of its earlier Judgement No. 135. The substantive relief which the Applicant now seeks on the basis of the discovery of new evidence relates to modification of Judgement No. 135: the Applicant seeks reliefs which have been rejected in that Judgement.

The Applicant bases his claim for revision mainly on the alleged discovery of a copy of a memorandum dated 1 September 1966 from the Acting Resident

Representative in the UNDP Office in Rabat "revealing undeniably the truth with regard to the contested agreement".

The Respondent contests the receivability of the application and also the authenticity and legal effect of the alleged memorandum.

Article 12 of the Statute of the Tribunal reads in part:

"The application [for revision] must be made within thirty days of the discovery of the [new] fact and within one year of the date of the judgement."

The time-limits fixed in that provision are mandatory and the Tribunal has no power either to extend them or condone any delay.

Since the application has not been made within one year of the date (26 October 1970) of Judgement No. 135 which the Applicant in substance seeks to revise, the application is not receivable and must be rejected.

II. It is therefore not necessary to consider the authenticity or legal effect of the alleged memorandum, both of which are questioned by the Respondent.

III. For the above reasons the application is rejected.

(Signatures)

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Vice-President

New York, 11 October 1972

Zenon ROSSIDES
Member
Jean HARDY
Executive Secretary

Judgement No. 164

(Original: English)

Case No. 154:
Sabillo

Against: The Secretary-General
of the United Nations

Termination on the ground of abolition of post of a local employee holding a temporary indefinite appointment.—Request for miscellaneous compensation, deriving from the fact that only belatedly did the Respondent acknowledge that the Applicant was a staff member.

Acknowledgement by the Respondent that the Applicant's employment was governed by the Staff Regulations and by the 100 Series of the Staff Rules, while he had previously taken the position that it was governed by rules applicable to temporary employees of the local Government.—The Tribunal has to consider the application on the basis of the Staff Regulations and Rules applicable to holders of temporary indefinite appointments.

Request for rescission of the termination decision.—Staff Regulation 9.1 (c).—The decision conformed to Staff Rule 109.1 (c).—Request rejected.

Request for compensation for the Respondent's failure to comply with certain provisions of the Staff Regulations and Rules.—Statement by the Tribunal taking note of the undertaking by the Respondent to pay to the Applicant the money equivalent