

Judgement No. 263*(Original: English)***Case No. 253:
Elmoznino****Against: The Secretary-General
of the United Nations**

Claim for compensation for injury sustained as a result of delays in granting assistance under the External Studies Programme.

Purpose of Administrative Instruction ST/AI/243.—Inasmuch as the Instruction did not confer a right to be granted assistance, it also did not confer a right to be granted assistance at a particular time.—Claim for compensation for the injury caused by the delay in the Applicant's studies.—That injury is purely hypothetical.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Samar Sen; Mr. Arnold Kean;

Whereas, on 28 April 1980, Merito Elmoznino, a staff member of the United Nations, filed an application the pleas of which read as follows:

“(a) Preliminary measures

“1. The Applicant respectfully requests the President of the Tribunal to ask the Secretary-General to produce the report relating to the Applicant's case submitted to the Secretary-General on 15 February 1980 by the Joint Appeals Board (hereinafter referred to as the JAB).

“2. If the recommendations of the report are favorable to the Applicant, he requests the Tribunal to consider the present application on the merits in pursuance of paragraph 2 (b) of Article 7 of its Statute since the Secretary-General has failed so far to take any action on the report.

“3. If the recommendations are unfavorable, the Applicant requests the Tribunal to set a time limit of 30 days during which the Secretary-General should take a decision on those recommendations. The Applicant further requests the Tribunal to consider the present application on the merits upon communication of the Secretary-General's decision or upon expiry of the time limit of 30 days, whichever is earlier.

“4. The Applicant requests the Tribunal to give him an opportunity to amend his pleas on substance and the explanatory statement in the light of the report of the JAB after the production of that report.

“(b) Substance

“The Applicant respectfully requests the Tribunal:

“1. To rescind the decision dated 6 April 1979 of the Chief of the Training and Examinations Service that the Applicant did not qualify for UN assistance to

attend an intensive nine-week course in Russian at the Russian School, Middlebury College in Vermont.

“2. To order the Secretary-General to pay the Applicant’s tuition for an intensive nine-week course in Russian similar to the course offered in 1979 by Middlebury College in Vermont and place the Applicant on special leave with pay during his attendance of the course.

“3. To order the Secretary-General to pay to the Applicant two months net base salary for the loss caused by the delay in his studies in Russian.”

Whereas the application was kept in abeyance by order of the President pending the Secretary-General’s final decision following the recommendation of the Joint Appeals Board;

Whereas, the Secretary-General having taken a final decision in the case, the Applicant filed on 25 June 1980 a revised application in which he requested the Tribunal:

“. . . to order the Secretary-General to pay to him two months net base salary for the loss caused by the delay in his studies in Russian.”;

Whereas the Respondent filed his answer on 13 August 1980;

Whereas the Applicant filed written observations on 11 September 1980;

Whereas the facts in the case are as follows:

On 2 March 1979 the Applicant, an interpreter working in the French booth from English and Spanish, submitted to the Training and Examinations Service a request under the External Studies Programme for assistance to attend an intensive nine-week course in Russian at the Russian School of Middlebury College in Vermont from 16 June to 18 August 1979. His purpose was to add Russian to the languages he interprets from in meetings and conferences. On 6 April 1979 the Chief of the Training and Examinations Service advised the Executive Officer of the Department of Conference Services as follows:

“. . .

“2. I regret to confirm to you that the purpose of this programme is not to finance language courses. As a matter of fact similar requests have been consistently rejected in the past both by the Advisory Panel on External Studies and by the Assistant Secretary General for Personnel Services, as a matter of policy.

“3. On several occasions requests have been made to the Budget division to obtain funds to finance language courses at outside institutions. So far, these funds have not been granted. We will keep your department informed of any change in the above-mentioned situation.

“4. I would appreciate it if you could inform the staff member accordingly.”

On 13 April 1979 the Applicant protested against that action in a memorandum to the Executive Officer reading in part:

“In the Administrative Instruction ST/AI/243 describing the External Studies Program I have found nothing that explicitly or implicitly states that [the studies of languages] are to be excluded from the Program. I should point out also that this Administrative Instruction has been revised more than once and yet at no time has it been deemed necessary to include such a rule, the overriding consideration being only that the studies undertaken ‘are clearly in the interest of the Organization’.

“I thought I had given straightforward and reasonable evidence in my application that I met such a condition. Indeed I am undertaking these studies at a time when the Interpretation Service is experiencing a very acute and alarming shortage of interpreters from Russian in the French booth; a reversal of this trend does not seem to be forthcoming in the near future despite serious efforts to recruit and train, at great expense to the United Nations, candidates from the outside. In these circumstances I feel that my request is not only timely and in conformity with the objectives of the External Studies Program but that it can also result in substantial savings for the Organization.

“Furthermore, I think that for the Training and Examinations Service to state as a general principle, and without qualification of any kind, that the External Studies Program does not include language courses can only discriminate against an entire Service where languages are precisely the essence of its work, unlike other Services where the acquisition of additional languages is only recommended as an added tool and serves a completely different purpose. The Interpretation Service is thus deprived of the benefits of a Program established by the General Assembly which is to be offered to ‘staff members at all levels’, the only qualification being that their ‘terms of appointment be governed by staff rules 101.1 to 112.8’.

“I have brought this case to your attention in the hope that you will correct this discriminatory practice and see to it that the Advisory Panel on External Studies considers my application.

“Would you kindly notify me of your decision by May 1st since I must give a final answer to the School by that date.”

On 9 May 1979 the Applicant requested the Secretary-General to review the decision taken by the Training and Examinations Service. On 20 June 1979 he lodged an appeal with the Joint Appeals Board. On the same day he was advised that the Secretary-General had confirmed the decision of the Training and Examinations Service. On 15 February 1980 the Joint Appeals Board submitted its report. The Board’s conclusions and recommendation read as follows:

“Conclusions and recommendation

“14. The Board finds that the appeal is not frivolous.

“15. The Board also finds that Administrative Instruction ST/AI/243 does not exclude language training from the External Studies Programme.

“16. The Board finds further that the decision by the respondent to reject the appellant’s application without submitting it to the Advisory Panel on External Studies for consideration was arbitrary.

“17. In view of the foregoing the Board recommends that the appellant’s application be submitted to the Advisory Panel on External Studies for consideration in accordance with paragraphs 8 and 9 of Administrative Instruction ST/AI/243.”

On the same day the Applicant was informed that the Joint Appeals Board had completed consideration of his appeal and had submitted its report to the Secretary-General. On 28 April 1980 the Applicant, not having received a copy of the Board’s report and not having been informed of any decision taken by the Secretary-General on the basis of the Board’s recommendation, filed with the Tribunal the application referred to earlier. On 8 May 1980 the Assistant Secretary-General for Personnel Services sent a copy of the Board’s

report to the Applicant and informed him that the Secretary-General, having re-examined his case in the light of the report, had decided that his request for financial assistance under the External Studies Programme be submitted to the Advisory Panel on External Studies for consideration. On 12 June 1980 the Secretary of the Advisory Panel addressed to the Applicant the following memorandum:

“1. I am pleased to inform you that the Advisory Panel has submitted a favorable recommendation and the Assistant Secretary-General has approved your request for External Studies as per the attached memorandum to the Executive Officer, Office of Personnel Services.

“Russian language courses, 16 June to 18 August 1980, Middlebury College, Vt.

“2. *In a two week period after the study; you are kindly required to submit to the Training and Examinations Service a detailed report in which are described the course, seminar or other event in which you participated, the knowledge gained and its use and benefits for yourself and your Service.*

“3. If, for any reason, you are unable to take the approved study leave, please inform us as soon as possible.

“4. Thank you for your co-operation.”

On 13 June 1980 the Applicant replied as follows:

“I have just received your memorandum of 12 June 1980. I note that against the expression ‘Total Cost’ the memorandum attached thereto states: ‘SLWFP.’ I assume that this expression means ‘Special Leave With Full Pay.’ I infer therefore that the Office of Personnel Services is not granting me the cost of the studies at Middlebury College which this year amounts to \$1,715.

“Your memorandum of 12 June specifies that the Russian courses at Middlebury College begin on 16 June, that is one working day after the receipt of that memorandum. I am sure you will understand that having to support a wife and two children on my salary I could not have found that sum on such a short notice, even if Middlebury College had been willing to accept an application submitted at such a late date.

“To my great regret, therefore, I cannot attend the Russian language courses at Middlebury College this year, and I would be grateful if you would submit to the Advisory Panel on External Studies a request on my behalf for assistance to attend Russian language courses in the summer of 1981.”

On 25 June 1980 the Applicant filed with the Tribunal the revised application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. By his communication of 8 May 1980, the Assistant Secretary-General for Personnel Services recognized implicitly that the 1979 decision taken by the Administration had been illegal. The decision caused the Applicant a delay of one year in his studies of Russian. That delay was extended by an additional year by instances of administrative inefficiency and negligence.

2. Article 9, paragraph 2, of the Statute of the Tribunal implicitly recognizes and the Tribunal has expressly applied in several instances that delays brought about by

inobservance of the terms and conditions of employment or by administrative negligence entitle the staff members concerned to pecuniary compensation.

3. The Applicant has invested considerable time and effort in the study of the Russian language. The delay of two years for which the Administration is solely responsible has caused him irreparable harm.

Whereas the Respondent's principal contentions are:

1. Since there is no legal obligation for the Respondent to grant study assistance, any delay in the granting of such assistance cannot be the subject of a claim for damages.

2. The Secretary-General's decision to grant the Applicant special leave with full pay only was a valid exercise of his discretion. It follows that the Applicant has no right to damages even if this assistance did not enable him to attend the course in 1980.

3. Even if the Applicant's contentions were well founded, in order to claim compensation he must have suffered a tangible loss. He has not suffered any such loss.

The Tribunal, having deliberated from 5 November 1980 to 12 November 1980, now pronounces the following judgement:

I. The Applicant sought assistance under Administrative Instruction ST/AI/243, article 1 of which states that the purpose of the Instruction is

“to outline the procedures by which staff members will be assisted under the external studies programme authorized by the General Assembly *in the interest of the Organization* . . .” [emphasis added].

Paragraph 2 of the Instruction reads:

“The primary objective of the external studies programme is to enhance the competence of staff members who need to acquire new knowledge and/or skills *for better performance of present or imminent functions*. Assistance will be granted *only when the studies are clearly in the interest of the Organization*” [emphasis added].

Article 5 of the Instruction sets out the ways in which assistance “may be provided”. Articles 8 and 9 indicate that the Assistant Secretary-General for Personnel Services will, with the help of a detailed assessment by an Advisory Panel on External Studies, reach a decision in each case.

II. In the Tribunal's view, the language of the Instruction indicates that its purpose is to invite applications for assistance which the Assistant Secretary-General may authorize if he thinks it in the interest of the Organization to do so.

III. The Applicant in his revised plea requests the Tribunal to order the Secretary-General to pay him two months' net base salary for the loss caused by the delay in his studies. The Tribunal's view is that, inasmuch as the Instruction did not confer a right to be granted assistance, it also did not confer a right to be granted assistance at a particular time.

IV. The Applicant was informed of the exercise of discretion in his favour only three days before the course at Middlebury College, Vermont, was due to begin, by which time it was, he states, too late for him to avail himself of the assistance granted. He had asked for a decision by 1 May 1979, but nevertheless long periods were allowed to elapse between the submission to the Secretary-General of the Joint Appeals Board's report (15 February 1980), the submission of the request to the Advisory Panel on External Studies (on or after 8 May 1980) and the communication to the Applicant of the Assistant

Secretary-General's final decision (12 June 1980). These delays, which are neither explained nor justified by the Respondent, did not, in the Tribunal's view, meet the requirements of good administration.

V. The Applicant in his revised application has claimed two months' net base salary for the loss caused by the delay in his studies in Russian, but has not furnished any justification for claiming that amount. The loss for which he claims compensation is therefore purely speculative. The Tribunal is of the opinion that the consequences of this avoidable delay in taking the course are so hypothetical that compensation ought not to be awarded.

VI. The application is therefore rejected.

(Signatures)

Francis T. P. PLIMPTON
Vice-President, presiding

Arnold KEAN
Member

Samar SEN
Member

Jean HARDY
Executive Secretary

New York, 12 November 1980

Judgement No. 264

(Original: English)

Case No. 254:
Piracés

Against: **The Secretary-General
of the United Nations**

Termination of the regular appointment of a staff member of the Economic Commission for Latin America (ECLA).

Termination under Staff Regulation 9.1(c) was a nullity because inconsistent with a prior agreed termination.—Criticism of the recommendation of the Joint Appeals Board that the Applicant should be reinstated.—Duty of the Administration to comply with special engagements it has undertaken with regard to a staff member.—Conclusion of the Tribunal that the decision to terminate the Applicant's appointment under Staff Regulation 9.1(c) is ill-founded.—Assessment of the injury sustained by the Applicant.—Award to the Applicant of 3,000 dollars by way of reparation.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza;

Whereas at the request of Jorge Piracés, a former staff member of the United Nations,