

**Judgement No. 282***(Original: English)***Case No. 259:  
Bartel****Against: The Secretary General of  
the International Civil  
Aviation Organization**

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*Application for revision of Judgements Nos. 277 and 269.*

*Article 12 of the Statute of the Tribunal.—The Applicant mentions no facts newly discovered subsequent to the previous judgements.—Failure to observe the time-limits prescribed in article 12.—Application rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. T. Mutuale; Mr. Arnold Kean;

Whereas, on 10 June 1981, the Applicant filed an application in which he requested a revision of Judgement No. 269 rendered in his case on 8 May 1981;

Whereas the Tribunal rejected the application by Judgement No. 277 rendered on 6 October 1981;

Whereas, on 16 October 1981, the Applicant filed a further application, dated 10 October 1981, in which he requested a revision of Judgements Nos. 269 and 277 under article 12 of the Statute of the Tribunal;

Whereas the application read in part:

“ . . .

“It was clear and unambiguous in the previous Application for Revision of Judgement 269 that there had been a discovery *in May, 1981* of facts which were of a nature so as to be a decisive factor in Case 259, and facts which were unknown to the Applicant and to the Tribunal on or before May 8, 1981. The Applicant's ignorance as to the facts was not due to negligence.

“The facts which were decisive were *discovered in May, 1981*, and are:

“(a) That the actions of the ICAO Secretariat personnel, Secretary General, and Joint Appeals body, described in the original Application, were based upon inadequate and erroneous information as described in the Application for Revision of Judgement 269, incorporated herein by reference (Judgement 138, *Peynado*);

“(b) That the original Judgement No. 269 was entered without consideration of such facts since they were not then known;

“(c) That the Respondent was aware of such facts throughout the process of the Case, thus connoting a lack of good faith and due process (Judgement 138, *Peynado*);

“(d) That the Respondent had produced Ex Parte adverse reports before the Joint Body after having previously denied their existence in writing at least twice,

thus seriously breaching due process (Judgement 123, *Roy*) and raising substantive civil contract issues; such allegation cannot be trivial;

“Thus Judgement 277 was in error as to its consideration of ‘facts’ referred to in Article 12 of the Statute, and their ‘discovery’. The facts were not police investigations in 1979. Obviously if the effects of such investigations and subsequent ICAO Secretariat/SG/Joint Body actions were known before May 8, 1981, they would have been introduced immediately.

“This Application shall be considered an Exhaustion of Administrative Remedies for judicial purposes only, and may not act to estop any further administrative remedy should such be discovered. If there is additional administrative remedy beyond this Application, should it be decided adversely to the Applicant, please advise in writing by Certified-Return Receipt or Registered mail within 10 days of the resulting Judgement on this Application.

“As in the original Application and previous Application for Revision, no consent is offered with respect to Article 10, paragraph 2 of the Rules.

“The original Application case file 259 and previous Application for Revision are incorporated herein by reference, as are the Texts of Judgements 123, 138, 269, and 277.

“As before it is requested that this Application be considered in private under Article 8 of the Statute. Counsel or personal presentation under Article 13 of the Rules, are reserved.”;

Whereas, on 9 November 1981, the Respondent filed his answer, which read in part:

“ . . .

“I wish to inform you that the process of termination of Mr. Bartel’s appointment was initiated towards the end of September 1979; in that connection, I met Mr. Bartel and we discussed the procedure and details of his termination and we agreed to a termination by mutual agreement in accordance with Part III, Article V, paragraph 10.4 of the Service Code. Mr. Bartel signed the letter of termination on 5 October 1979.

“The Organization was not aware of the facts referred to by Mr. Bartel in his letter of 10 October 1981 until after the termination of his contract, and those facts were never brought to the attention of the Advisory Joint Appeals Board.

“Consequently, I submit that Application for Revision of Judgements 269 and 277 is not receivable.”;

Whereas the Applicant, in written observations filed on 8 December 1981, requested the Tribunal:

“ . . . to Revise Judgements 269 and 277 so as to receive the Application in Case 259 for at least the requested Preliminary and Provisional measures under Articles 9, 11, 12, and 14 of the Statute, and Articles 10, 13, 15, 16, 17, and 26 of the Rules. Oral proceedings in private are requested (Article 8 Statute).”;

Whereas, on 10 April 1982, the Applicant requested oral proceedings and assignment of counsel from the panel of counsel;

Whereas the facts in the case were set out in Judgement No. 269.

The Tribunal, having deliberated from 26 April to 6 May 1982, now pronounces the following judgement:

I. As all the relevant materials for considering the application are on record before the Tribunal it is not necessary to hold oral proceedings or to designate counsel to represent the Applicant.

II. The Applicant seeks revision, under article 12 of the Statute of the Tribunal, of Judgements Nos. 277 and 269 rendered in his case on 6 October 1981 and 8 May 1981 respectively.

III. Under article 12 of its Statute, the Tribunal can revise a judgement if:

- (a) Some fact, unknown to the Tribunal and to the party claiming revision at the time the judgement was given, is subsequently discovered;
- (b) Such fact is a decisive factor; and
- (c) The ignorance of such fact is not due to the negligence of the party claiming revision.

The Tribunal may also, of its own motion or on the application of any of the parties, correct clerical or arithmetical mistakes in the judgement or errors arising therein from any accidental slip or omission.

The Tribunal recalls that, in its Judgement No. 73 (*Bulsara*), it stated: "The powers of revision are strictly limited by the Statute of the Administrative Tribunal and cannot be enlarged or abridged in the exercise of its jurisdiction by the Tribunal".

IV. The Tribunal notes that in support of his application for revision the Applicant merely records facts to which he has already referred in his earlier applications, without mentioning any newly discovered fact.

V. Furthermore, the Tribunal observes that under article 12 of its Statute the application for revision must be made within 30 days of the discovery of the fact and within one year of the date of the judgement.

VI. The Tribunal notes in this respect that the facts which the Applicant regards as decisive "were *discovered in May 1981*" and that the application for revision is dated 10 October 1981.

VII. For the foregoing reasons, the application for revision is rejected.

(Signatures)

Endre USTOR  
*President*

T. MUTUALE  
*Member*

*Geneva, 6 May 1982*

Arnold KEAN  
*Member*

Jean HARDY  
*Executive Secretary*

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