XII. For the foregoing reasons, the Tribunal decides that it does not have competence in this case. The application is rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding

T. MUTUALE
Alternate member

Herbert REIS
Member

Jean HARDY
Executive Secretary

Roger PINTO
Member

Geneva, 23 May 1984

Judgement No. 330

(Original: English)

Case No. 236: Klee *Against:* **The Secretary-General of the United Nations**

Request by a former staff member of UNIDO for interpretation of Judgement No. 242. Conditions of receivability of requests for interpretation.—The Tribunal's practice to grant such requests provided that the requesting party appears to have a legitimate interest in the clarification of the judgement concerned.—Finding that the Applicant has a legitimate interest in the interpretation of Judgement No. 242.—Lack of due diligence on the part of the Applicant in not requesting clarification on a previous occasion instituting proceedings for the interpretation of Judgement No. 242 cannot relieve the Respondent from his duty to give effect to that judgement.—Respondent's contention that interpretation given in Judgement No. 253 constitutes res judicata *which defeats the Applicant's claims.—Contention rejected.*

Interpretation of paragraph XII of Judgement No. 242.—Application of staff rules 109.8 and 109.5.—The Tribunal interprets the words "all allowances, except home leave entitlement" as not including payment for accrued annual leave and including the increase in the amount of repatriation grant.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. Arnold Kean, Vice-President; Mr. T. Mutuale; Mr. Roger Pinto, alternate member;

Whereas, in Judgement No. 242 rendered on 22 May 1979, the Tribunal decided that the Respondent should

"pay the Applicant the amount of 15 months' salary at the P-3, step VII level, including all allowances, except home leave entitlement, which the Applicant would have earned had he been maintained in UNIDO's service for 15 months from 1 April 1976";

Whereas, on 26 October 1979, the Applicant filed an application for interpretation of Judgement No. 242 in which he requested the Tribunal to:

"Declare and rule that the compensation awarded to the Applicant by Judgement No. [242] of 22 May 1979 and equivalent to 'the amount of 15 months' salary at the P-3, step VII level, including all allowances, except

home leave entitlement, which the Applicant would have earned had he been maintained in UNIDO's service for 15 months from 1 April 1976' should be paid to him in Austrian currency, conversion from United States dollars to Austrian currency being effected at the rates of exchange in effect between 1 April 1976 and 30 June 1977.";

Whereas, in Judgement No. 253 rendered on 22 April 1980, the Tribunal decided

"that the total compensation for the injury sustained by the Applicant must be calculated by reference to the sums he would have earned in Austrian schillings had he been maintained in service over the 15-month period from 1 April 1976 to 30 June 1977, on the basis of the various successive exchange rates prevailing during that period."

Whereas, on 21 June 1983, the Applicant filed a further application in which he requested the Tribunal

"State and judge that the compensation granted to the appellant by judgements Nos. 242 and 253 should include specifically the additional amounts which the appellant would have received by way of a lump sum annual leave payment and a repatriation grant payment as part of the 'fifteen months of salary at grade P.3, step 7, including all entitlements, except the right to home leave, to which the appellant would have been entitled if he had been maintained in the service of UNIDO for fifteen months beyond 1 April 1976.";

Whereas the Respondent filed his answer on 20 September 1983;

Whereas the Applicant filed written observations on 5 January 1984;

Whereas the Respondent submitted additional information at the request of the Tribunal on 22 May 1984;

Whereas the facts in the case, subsequent to Judgement No. 253, are as follows:

On 14 May 1980 the Applicant requested implementation of Judgement No. 253 in a letter to the Secretary-General which read in part:

"It may help you in your calculations if I outline the following points which arise from the ruling:

"Based on the UNIDO Computation of Final Payment, 12 April 1976, copy enclosed, a 'reconstitution of career' would include (1) a lump sum payment for accrued annual leave and (2) repatriation grant extrapolated to cover the additional 15 months. In addition, the step increases which would have occurred during the 15 months should be calculated in. I would appreciate a statement from you as to whether or not these step increases were calculated into the payment of July 1979. They would have an impact on the annual leave lump sum and repatriation grant payments as well.

"In addition, I believe I have a right to claim interest on the unpaid balance of the total amount of compensation from about the time of the Judgement of 22 May 1979 to the date of final settlement of this amount. I consider this claim to be rather on the low side in view of the additional prejudice which the further delay has caused to my family and myself."

On 29 May 1980 a Personnel Officer in the Personnel Services Section of UNIDO replied as follows:

". . .

"As I informed you during the discussion on 14 May, the matter had to be referred to New York for interpretation. We have now been informed that after consultation with the Office of Legal Affairs, the settlement is to be effected as follows: the compensation for 15 months' salary at the P-3 Step VII level from 1 April 1976 through 30 June 1977 to be calculated at the different dollar/Austrian schilling rates of exchange in effect at the respective months (Paragraph VIII of the judgement). Furthermore, the legal fees of $1,000 should be converted to Austrian schillings at the dollar/Austrian schilling rates of exchange at the time of the judgement, i.e., 22 May 1979 (Paragraph IX of the judgement).

"We were further instructed that according to the above interpretation by the Office of Legal Affairs, New York, no other entitlements as claimed by you in your above letter of 14 May 1980 in addition to the above adjusted dollar/Austrian schilling exchange rates will be payable."

An additional payment was made by UNIDO to the Applicant in accordance with these terms. In letters dated 19 June 1980, 13 September 1980, 15 January 1982 and 6 January 1983, the Applicant asked the Secretary-General to reconsider the matter. On 14 February 1983 the Legal Counsel, referring to the Applicant's letter of 6 January 1983, advised him as follows:

"Your subsequent correspondence appears to have requested additional payments not ordered by the Tribunal and was transmitted to the Office of Personnel Services for appropriate action under Chapter XI of the Staff Regulations and Rules as a new appeal. Accordingly, you may wish to address any further correspondence on the matter to Mr. Alberto Perez, Acting Chief of the Administrative Review Unit of the Office of Personnel Services. However, should you feel that you have a basis to address the Administrative Tribunal directly with regard to Judgement No. 253, you are, of course, free to do so."

In a reply dated 9 March 1983, the Applicant stated:

". . .

"I wish to take exception to the statement contained in the final paragraph of your letter of 14 February 1983 to the effect that 'your (my) subsequent correspondence appears to have requested additional payments not ordered by the Tribunal . . .'. If you will examine my letter of 14 May 1980 . . . you will note that the intent of this letter is merely to request execution of the Tribunal's Judgement No. 253. The Tribunal has been quite specific in referring to its previous Judgement No. 242 concerning the appellant's right to all entitlements, with one or two specific exceptions, which he would have received had he been maintained in UNIDO service for an additional fifteen months. Indeed, the Tribunal goes to the length of underlining the most significant parts with respect to his rights and maintenance in service. In addition, the Tribunal points out that it was its intent to effect to the benefit of the appellant 'a veritable reconstitution of career'. In view of these facts, it is difficult to understand why you consider such payments to be 'additional'. Accordingly, a transfer of this appeal to the Office of Personnel Services, it seems to me, would not have much point so long as the Legal Counsel took the position that this request for execution of the Tribunal's Judgement should be treated as a new appeal to the United Nations.

"You are kindly requested, therefore, inasmuch as you have finally replied to my correspondence, to re-examine the basis of my claim for

execution, and if you find, as I think you should, that it comes entirely within the intent and meaning of the United Nations Tribunal's Judgement No. 253, I hope you will so inform the competent United Nations administrative office in order that the recommendation may be properly and fully complied with. If, on the other hand, you do not agree with this interpretation, I should appreciate it if you would inform me of this at your earliest convenience.

". . ."

On 30 March 1983 the Assistant Secretary-General for Personnel Services informed the Applicant that his claims had been carefully examined upon receiving his letters of 6 January and 9 March 1983 but that no grounds had been found for reconsidering the position conveyed to him in 1980; he added:

"This re-examination of your claims should not be construed as a waiver of any objections based on your failure to observe any applicable time limits for contesting the interpretation and implementation of Judgement No. 230."

On 21 June 1983 the Applicant filed the further application referred to earlier.

Whereas the Applicant's principal contentions are:

1. It is clear from the terms of Judgements Nos. 242 and 253 that the present claim does not constitute a new appeal to the Secretary-General.

2. While the question of the applicable dollar/schilling exchange rate was not implicit in Judgement No. 242 and therefore was open to further interpretation by the Tribunal, the same cannot be said with regard to the matter of extension of emoluments for the additional fifteen months' period specified, since the Tribunal's intention has been clearly stated in its two decisions. This fact is made even more evident by the UNIDO computation of final payment for the Applicant dated 12 April 1976.

Whereas the Respondent's principal contentions are:

1. The Applicant's contention that he is entitled to additional benefits cannot be sustained because the elements constituting *total* compensation awarded him by the Tribunal were accepted both by the parties and by the Tribunal when the Tribunal subsequently interpreted its first judgement. The matter is *res judicata* and therefore no longer the object of further action between the parties.

2. In any event, the Applicant's present action before the Tribunal is time-barred.

The Tribunal, having deliberated from 8 to 28 May 1984, now pronounces the following judgement:

I. The Tribunal considers the application as not falling under article 12 of the Statute, as claimed by the Respondent, but as a request for interpretation of Judgement No. 242. In paragraph XII of that judgement the Tribunal decided

"that the Respondent shall pay the Applicant the amount of 15 months' salary at the P-3, step VII level, including all allowances, except home leave entitlement, which the Applicant would have earned had he been maintained in UNIDO's service for 15 months from 1 April 1976".

The request for interpretation is addressed particularly to the question whether the words "all allowances, except home leave entitlement" include accrued annual leave payment and repatriation grant payment to which the Applicant

would have been entitled if he had been retained in the service of UNIDO for 15 months beyond 1 April 1976.

The Tribunal has developed a practice of granting requests for interpretation of its own judgements provided that the requesting party appears to have a legitimate interest in the clarification of the judgement concerned. As the Respondent has construed the decision of the Tribunal as not obliging him to pay the amounts in question, the Tribunal finds that the Applicant has a legitimate interest in the interpretation of Judgement No. 242, paragraph XII.

II. It is true that the Applicant has on a previous occasion instituted proceedings for the interpretation of Judgement No. 242 and that in those proceedings he could have requested clarification of the points which he now raises. The question could be asked whether the Applicant by his negligence, which he admits, lost his right to make his present request. The Tribunal answers this question in the negative, giving the Applicant the benefit of the doubt on the ground that the lack of due diligence on the part of the Applicant cannot relieve the Respondent from his duty to give effect to Judgement No. 242 if the Tribunal interprets that judgement in the way suggested by the Applicant.

III. The Respondent denies the interest of the Applicant in the interpretation requested, believing that the Applicant, if he ever had a right to the amounts in question under paragraph XII of Judgement No. 242, lost his entitlement by his agreement to exclude these amounts from his claims. The view of the Respondent is supported by the following events which occurred in the course of the proceedings leading to Judgement No. 253.

The Applicant submitted as Annex 2 to his application a list made out by the Respondent which clearly showed that the Applicant's claim amounted to 38,157.35 US dollars and that this amount did not include a payment for accrued annual leave or additional repatriation grant for the 15 months in question.

In the same proceedings the Respondent stated in his answer: "Applicant and Respondent agree that the salary Applicant would have earned had he been maintained in UNIDO's service for 15 months from 1 April 1976 amounts to 38,157.35 US dollars . . .". The Applicant did not submit any observation on this statement of the Respondent.

In Judgement No. 253 the Tribunal stated as a fact that "The Applicant and the Respondent agree on the amount in US dollars of the sum due in this connection, namely US dollars 38,157.35 . . ."

In the same judgement the Tribunal also decided that "the total compensation for the injury sustained by the Applicant must be calculated . . . on the basis . . ." of various successive exchange rates.

In view of the above the matter is, according to the Respondent, *res judicata,* which defeats the Applicant's claim and his interest in the interpretation of Judgement No. 242.

IV. The Tribunal holds however that the excerpts from Judgement No. 253 quoted above do not constitute *res judicata* as in the relevant proceedings the Tribunal decided not the amount of the Applicant's claim but the exchange rates to be used. Moreover, the Tribunal holds that it cannot be lightly presumed that a staff member has renounced part of his entitlements, and finds no sufficient proof that the Applicant has done so.

V. For the reasons stated above, the Tribunal enters into the merits of the Applicant's request and gives the following interpretation of Judgement No. 242, paragraph XII.

As to whether the words "all allowances, except home leave entitlement" did or did not include payment for accrued annual leave, the applicable staff rule is Rule 109.8, which reads as follows:

"Commutation of accrued annual leave

"If, upon separation from service, a staff member has accrued annual leave, the staff member shall be paid a sum of money in commutation of the period of such accrued leave up to a maximum of 60 working days. . . .".

When the Applicant was separated from service, he received payment for 31 working days of accrued annual leave. This payment was evidently made as commutation because he did not take his full annual leave prior to the expiration of his contract. By Judgement No. 242 the Tribunal awarded to the Applicant a total of 15 months' salary as compensation which the Applicant received without actually serving for 15 months. The reconstruction of the Applicant's career, to which the Tribunal referred in Judgement No. 253, presupposes that in accordance with normal practice the Applicant would have taken his annual leave and therefore the question of commutation would not arise. Consequently the Tribunal finds that the words "all allowances, except home leave entitlement" do not include any payment for accrued annual leave.

VI. As to whether the words "all allowances, except home leave entitlement" did or did not include payment of repatriation grant, the Tribunal recalls that, as expressed in Judgement No. 253, it intended in Judgement No. 242 "to reconstruct the Applicant's career financially for a period of 15 months". Had the Applicant been retained in service for this period, the amount of repatriation grant payable under Staff Rule 109.5 would have increased in accordance with annex IV to the Staff Regulations. Consequently the Tribunal interprets the words "all allowances, except home leave entitlement" in Judgement No. 242, paragraph XII, as including the increase in the amount of repatriation grant (less staff assessment) which the Applicant would have received had he remained in service for a further 15 months.

VII. The Tribunal takes note of the Applicant's statement that—no doubt because of his failure to raise these questions of interpretation in the proceedings leading to Judgement No. 253—he makes no claim to interest on the amount to be paid to him.

(Signatures)

Endre USTOR
President

Roger PINTO
Alternate Member

Arnold KEAN
Vice-President

Jean HARDY
Executive Secretary

T. MUTUALE
Member

Geneva, 28 May 1984