
Judgement No. 366*(Original: English)***Case No. 332:
Sabatier****Against: The Secretary-General
of the United Nations**

Request for interpretation of Judgement No. 347.

Consideration of the nature of the request.—The Tribunal holds that article 12 of its statute is the only basis for an application for revision or correction of its decisions.—Tribunal's consistent jurisprudence, since Judgement No. 61 (Crawford et al.) that it is competent to interpret its judgements.—Finding that the Applicant is not asking for an interpretation or clarification of Judgement No. 347 but for its revision.—Final nature of that judgement under article 10.2 of the statute.—Possibility, under article 12 of the statute, of correcting errors, at the Tribunal's own motion or on application of any of the parties.—Decision to substitute "\$16,201.80 (U.S.)" for "\$25,000 (U.S.)" in paragraph XXIV of Judgement No. 347.—Finding that the award of compensation in terms of net base salary was not the result of an accidental slip or omission.

No further action by the Tribunal called for.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

**Composed of Mr. Samar Sen, President; Mr. Arnold Kean, Vice President;
Mr. Roger Pinto;**

Whereas in Judgement No. 347 delivered on 13 June 1985, the Tribunal decided that the Respondent should "pay the Applicant nine months' net base salary from 1 November 1981 to 31 July 1982, less \$25,000 (U.S.) being the amount of the termination indemnity already paid";

Whereas on 6 September 1985 a Staff Officer at UNICEF notified the Applicant that the Comptroller's Division had deposited the sum of \$4,163.23 (U.S.) to his bank account in New York. This sum represented "the award due to [him] as decided by the Administrative Tribunal";

Whereas in letters dated 19 September 1985 and 30 September 1985 the Applicant requested the Tribunal to "order UNICEF to review" their calculation of the amount paid on the ground that it did not "represent the actual financial loss" incurred by the Applicant;

Whereas on 18 October 1985, a Staff Officer at UNICEF informed the Applicant that upon "rechecking amounts already paid to [him]", the Administration realized that the termination indemnity paid to the Applicant when he separated from the service of UNICEF amounted to \$16,201 (U.S.) and not to \$25,000 (U.S.), as the Applicant had asserted in his pleas to the Tribunal in Judgement No. 347. Accordingly, the Comptroller's Division would deposit the sum of \$8,798.22 (U.S.) to the Applicant's bank account in New York;

Whereas the Respondent filed his answer on 31 October 1985;

Whereas the Applicant filed his written observations on 22 November 1985, in which he described what constituted in his view, "a fair indemnity";

Whereas on 7 April 1986 the Applicant addressed a letter to the Executive Secretary of the Tribunal in which he amended the amount of the balance due to

him from the Respondent, as he had described it in the written observations on the Respondent's answer. The Applicant requested payment by UNICEF of an additional sum of \$5,476.51 (U.S.). On 11 April 1986 he asked that the contents of his letter of 7 April 1986 "should be considered as [his] official and final stand in this matter".

Whereas the Applicant's principal contentions are:

1. Since the Tribunal declared that the termination of the Applicant's appointment by UNICEF was invalid, and awarded the Applicant the unexpired portion of his fixed-term appointment, the Applicant is entitled to an indemnity that represents the Applicant's nine month Beirut-based salary.

2. The Applicant is entitled to reimbursement of US taxes levied on his compensation.

Whereas the Respondent's principal contentions are:

1. The Applicant is requesting a reconsideration and not an interpretation of Judgement No. 347. Such reconsideration would violate paragraph 2 of Article 10 and Article 12 of the Statute of the Tribunal.

2. The Applicant's request for gross base salary or income tax reimbursement and for Pension Fund contributions constitutes a request for reconsideration of a judgement, beyond the statutory competence of the Tribunal.

The Tribunal, having deliberated from 28 April to 23 May 1986, now pronounces the following judgement:

I. The Applicant addressed two letters to the Executive Secretary of the Tribunal. In his letter dated 19 September 1985 he stated "I would appreciate hearing the Administrative Tribunal's views" and in a second letter dated 30 September 1985 he requested the Tribunal to "order UNICEF to review their previous calculation" of the amounts paid in compliance with the Tribunal's Judgement No. 347.

II. Article 12 of the Statute of the Tribunal is the only basis on which an application can be made to the Tribunal for revision or correction of its decisions previously made. Article 12 does not require such an application to be in any particular form, but it would make for clarity and would assist the Tribunal if the issues, facts and arguments could be specifically set out in the application, rather than left to be discovered from correspondence with a third party (in this case with UNICEF) or with the Tribunal itself.

III. The same consideration applies if, outside the parameters of Article 12, an application is made to the Tribunal to interpret or remove an apparent ambiguity or obscurity in a judgement. The Tribunal has consistently followed the precedent established by Judgement No. 61 (*Crawford and others*), holding that it is competent to interpret its judgements in accordance with the general principles set out by the International Court of Justice in the Asylum case [interpretation], (ICJ Reports, 1950, pages 402 . . . 403).

IV. However, from the Applicant's correspondence, it appears to the Tribunal that he is not asking for the interpretation or clarification of Judgement No. 347, but for its revision. He argues that the award in that judgement "should have taken in consideration that the UNICEF decision I was a victim of in 1981 actually cost me *the loss of a 9-month Beirut based salary*". In fact, the judgement awarded him "nine months' net base salary from 1 November 1981 to 31 July 1982, less \$25,000 (U.S.) being the amount of the termination indemnity already paid".

Under Article 10.2 of its Statute, the Tribunal's Judgement No. 347 is final. It took into account all the facts presented to the Tribunal and does not require

revision, whether to take account of the salary the Applicant would have received had he been employed in Beirut for the nine months in question, or because of his liability to taxation in the USA, or by reason of his pension fund contributions, or for any other reason.

V. However, under Article 12 of its Statute, the Tribunal may at any time, of its own motion or on application of any of the parties, correct "clerical or arithmetical mistakes in judgement, or errors arising therein from any accidental slip or omission". In making its award in Judgement No. 347, the Tribunal accepted the statement of the Applicant that he had been paid \$25,000 (U.S.) by way of termination indemnity. It later appeared that the Applicant had overstated the amount so paid, which in fact was \$16,201.80 (U.S.). Upon discovery of this error, the Respondent voluntarily and promptly made good the difference. To correct the record, the Tribunal now substitutes \$16,201.80 (U.S.) for \$25,000 (U.S.) in paragraph XXIV of Judgement No. 347. The Tribunal is not aware of any accidental slips or omissions which require to be corrected.

VI. The award in terms of net base salary, was made "bearing in mind all the circumstances of the case, and in accordance with its [the Tribunal's] previous Judgements No. 113, para. XIII (*Coll*, 1967) and No. 172, para. XVI (*Quémerais*, 1973)." It was not the result of "an accidental slip or omission" within the meaning of Art. 12.

VII. In view of the above, no further action by the Tribunal is called for.

(Signatures)

Samar SEN

President

Arnold KEAN

First Vice-President

Geneva, 23 May 1986

Roger PINTO

Member

R. M. VICIEN-MILBURN

Executive Secretary

Judgement No. 367

(Original: English)

Case No. 354:
Poppinga

Against: The Secretary-General
of the United Nations

Request by a staff member of the United Nations for the rescission of the decision withdrawing her parking entitlement and for reinstatement of that entitlement, and for compensation.

Direct submission of the application to the Tribunal under article 7 of its statute.

Consideration of the circumstances of the case.—Finding that neither the Applicant's letter of appointment nor the Staff Regulations and Staff Rules refer to the provision of parking space at United Nations Headquarters.—Grant to the Applicant of a parking permit under administrative instruction ST/AI/178.—Withdrawal of the permit under administrative instruction ST/AI/288.—Finding that the decision to withdraw the parking permit correctly interpreted the provisions of the latter instruction.—Applicant's contention that the decision violated her acquired rights.—The Tribunal holds that neither the Applicant's letter of appointment nor administrative instruction ST/AI/178 gave rise to any legal right to a parking permit.—Applicant's contention that the use of the parking space during 12 years gave her "a right of property".—The Tribunal holds that use of a parking space on the basis of a permission and not