
ADMINISTRATIVE TRIBUNAL

Judgement No. 466

Case No. 469: MONTEIRO-AJAVON

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Roger Pinto, Vice-President, presiding;
Mr. Samar Sen; Mr. Ahmed Osman;

Whereas, on 16 May 1988, Otelinda Monteiro-Ajavon, a former staff member of the United Nations, specifically recruited for the African Institute for Economic Development and Planning, hereinafter referred to as IDEP, filed an application, the pleas of which read as follows:

"II. PLEAS

The Applicant requests that it may please the Tribunal to order the measures and take the decisions described below:

A. Preliminary and provisional measures before consideration of the application on its merits

- 1) The transmittal to the Tribunal by the Respondent of the complete file on the case, including all documents relating to the still secret and unsupported allegations concerning, in particular, what the Respondent calls the Applicant's 'unbecoming conduct' in 1985, which was the ground adduced by the Respondent for the Applicant's redeployment to the Typing Pool and the impairment of her career (...).
- 2) The transmittal to the Tribunal by the Respondent of the report of the ad hoc Committee established on 27 November 1984 pursuant to inter-office memorandum No. M/154 (...), and the documents concerning the

appointment and/or transfer of staff in June, August and October 1985, in connection with the implementation of the ad hoc Committee's recommendations.

- 3) The transmittal to the Tribunal by the Respondent of the audit report prepared by Mr. Fofana, an auditor in Geneva, in June and July 1985, of which only a two-page extract was submitted to the Joint Appeals Board (...).
- 4) The urgent transmittal to the Applicant of true copies of the files referred to in paragraphs 1, 2 and 3 above, together with a current copy of the United Nations Staff Regulations and Staff Rules (French text).

The above-mentioned files must be produced so that it may be possible to judge the accuracy of the conclusions drawn by the Respondent and the Applicant from the information contained in these files concerning the real reason for the non-renewal of the Applicant's appointment. This procedure may also permit the establishment of connections between various aspects of the contested decisions, particularly by showing how the Applicant's transfer to the Typing Pool was part of the process undertaken to terminate her appointment without giving her the opportunity fully to exercise her right of defence. The documents requested in paragraph 2 will enable the Tribunal to see whether or not there was a post that could have been given to the Applicant, which would have made it unnecessary to resort to the non-renewal of her appointment. The Tribunal will also be able to weigh the accuracy of the Applicant's conclusions as to the way in which the Administration fulfilled its obligation to seek another suitable post for her.

- 5) The hearing of Mr. Fofana, an auditor in Geneva, mentioned in paragraph 4 above, with regard to:

- (i) The impression which he formed of my professional services, which could even be described as servitude, especially in view of the opportunities to avail myself of my right to annual leave;

- (ii) His observations as to the employment of temporary staff in the context of the financial constraints affecting IDEP [African Institute for Economic and Development and Planning] and the conclusions and recommendations of the ad hoc Committee referred to in paragraph 2 above.

- 6) The hearing of Mr. Makhtar Diouf, adjunct professor at IDEP and professor at the Faculty of Economic Sciences of the University of Dakar, Senegal, with regard to:

(i) The way in which the Applicant's duties in the Research and Training Unit of IDEP were affected by the management practices of the Officer-in-Charge of the Institute while the Director was on various missions;

(ii) The relations which existed between Professor Diakité and the students with regard to the supervision of theses.

7) The hearing of Mr. Fidele Ndayisinga, a former student at IDEP, whose testimony I am hereby submitting to the Tribunal (...).

B. Contested decisions which the Applicant is requesting the Tribunal to rescind under article 9, paragraph 1, of its Statute

1. The decision taken by the Director of IDEP on 23 September 1985, pursuant to his inter-office memorandum No. M/201, to transfer the Applicant to the Typing Pool as a typist; that decision could have been effectively contested by the Applicant if she had known at the time the ground on which it was based revealed by the Respondent to the Joint Appeals Board as 'unbecoming conduct' (...).

2. The decision of 8 January 1988, by which the Respondent, having examined the conclusions and recommendations of the Joint Appeals Board, maintained the administrative decision not to renew the Applicant's appointment.

C. Obligations which the Applicant is invoking and whose specific performance she is requesting under article 9, paragraph 1, of the Statute

1. Performance by the Respondent of the obligation incumbent upon it, in accordance with the Staff Regulations and Staff Rules, and the consistent jurisprudence of the Tribunal, to conduct a bona fide search for a suitable post for the Applicant, following the abolishment of the post which she had occupied.

D. Amount of compensation claimed by the Applicant in the event that the Secretary-General decides, in the interest of the United Nations, to pay compensation for the injury sustained in accordance with the option given to him under article 9, paragraph 1, of the Statute of the Tribunal

1. For the material injury sustained by the Applicant as a result of the administrative decision not to renew her contract, and the subsequent moral injury sustained by her, the Applicant claims compensation equivalent to two years' base salary, in accordance with article 9, paragraph 1, of the Statute of the Tribunal.
2. Compensation for the injury sustained as a result of the harassment to which the Applicant was subject, and of the impossibility of her finding another job at her age in a labour market characterized by widespread unemployment.

E. Other relief which the Applicant requests in accordance with the Statute of the Tribunal

1. Compensation - i.e., a disability benefit - for the injury sustained as a result of the deterioration of her eyesight, as attested by a physician (...), which prevents the Applicant from envisioning retraining and future career possibilities in the field of data processing, including word processing."

Whereas the Respondent filed his answer on 31 March 1989;
Whereas the Applicant filed written observations on 8 May 1989;

Whereas, on 3 October 1989, the presiding member of the Panel ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant was employed by the Economic Commission for Africa (ECA) in Addis Ababa as a French Secretary at the G-7, step VIII level from 17 August 1968 until 29 August 1975.

On 1 October 1975, the Applicant was recruited as a Bilingual Secretary by the IDEP located in Dakar, Senegal. She served on a series of short-term appointments until 31 March 1976. On 1 April 1976, she was offered a one month fixed-term appointment that was further extended for fixed-term periods. On 1 May 1976, she was appointed Administrative Assistant and on 1 November 1976 she became a Research Assistant. On 1 January 1982, she was promoted to the G-8, step III level and her fixed-term appointments were

successively extended for further fixed-term periods until the date of her separation from the service of IDEP on 31 August 1986.

It appears that on 4 July 1985, the Applicant engaged in a public dispute with a professor of the Institute, Mr. Diakité. According to the professor, the incident which led to the altercation resulted from the Applicant's decision to announce in writing, without consulting him, the date for the publication of examination results. According to the Applicant, Mr. Diakité insulted her in a humiliating and vulgar fashion. From then on, relations between the Applicant and the Administration deteriorated.

In the meantime, in view of the financial situation of the Institute, the Director had decided to establish an ad hoc Committee "to review the situation arising from the financial crisis facing the Institute and to make recommendations to enable him to take the necessary decisions" concerning reduction of staff and abolition of posts. According to an audit report dated 13 December 1984, "the Committee reviewed the performance of each staff member of the General Service category and recommended to the Director, that 11 out of 43 General service staff members be separated from the Institute, including the entire Typing Pool and Reproduction Section made up of six staff members." The Committee's report and recommendations were submitted to the Director and sent to ECA Headquarters for approval before implementation at the end of March 1985. In turn, the Executive Secretary of ECA, who was also the Chairman of the IDEP Governing Council, sought the Director's views and comments on the report.

The Applicant asserts that when she returned from vacation on 5 September 1985, she performed no function until 23 September 1985, when she was temporarily assigned to the Typing Pool as a Typist. On 28 February 1986, the Chief, Administration and Finance, informed the staff of the Institute that the Applicant had been designated supervisor of the Typing Pool. The Applicant argues that this was a fictitious assignment, because the work she performed until the expiration of her appointment was that of a Typist.

In a memorandum dated 22 May 1986, the Chief, Administration and Finance, set forth his recommendations to the Executive Secretary of ECA concerning the streamlining of staff and the management of the Institute, taking into account the report of the ad hoc Committee mentioned above. He recommended the abolition of six posts and the separation from service of six staff members, five of them constituting what remained of the Typing Pool. As regards the Applicant, the Chief, Administration and Finance, noted:

"Miss AJAVON was not included among those recommended for separation in the ad hoc Committee's report. However, during 1985 her unbecoming conduct led to her redeployment to the Typing Pool as a Typist. With the recommended separation of ... and ... all the staff of the Typing Pool would have been done away with. Under normal circumstances, Miss Ajavon could have been redeployed to another Unit. ..."

He then explained why it would not be possible to redeploy the Applicant to another Unit, on the grounds "that she cannot be relied upon; she has no respect for her supervisors ... she thinks she is too senior to be a typist after her long service...", and noted: "When I wanted to redeploy her after her appeal, no supervisor wanted to accept her because they said she is too difficult and troublesome. Under these circumstances, I think the Institute can very well do without her." In a cable dated 24 July 1986, the Executive Secretary of ECA endorsed the recommendations, by the Chief, Administration and Finance.

In a memorandum dated 22 July 1986, the Chief, Administration and Finance, informed the Applicant that in light of the financial situation of the Institute, her post would be abolished, effective 31 August 1986, pursuant to staff rule 109.1(c) and her fixed-term appointment which was due to expire on 31 August 1986 would not be extended.

On 20 August 1986, the Applicant requested the Secretary-General to review the administrative decision not to extend her fixed-term appointment beyond 31 August 1986, on the grounds that it was an improper termination. Not having received a

reply from the Secretary-General, on 8 December 1986, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 15 December 1987. Its findings and recommendations read as follows:

"Findings and recommendations

32. In view of the above, the Panel unanimously:

Decided that in the absence of any objection of the Respondent the appeal was receivable;

Found that the documents requested by the appellant were not relevant to the appeal or the proceedings before the Panel;

Found that the decision to cancel the post encumbered by the appellant was correctly taken;

Found that the decision not to renew the appellant's fixed-term appointment had properly been arrived at, as the appropriate procedure had been scrupulously adhered to and the appellant had not produced any convincing evidence that the decision had been motivated by prejudice or by some other extraneous factor;

Found that since the decision not to renew the appellant's fixed-term appointment could not be construed as a termination within the meaning of the Staff Regulations, the appellant was not entitled to termination indemnity.

33. Consequently, the Panel made no recommendation in support of the appeal."

In a letter dated 8 January 1988, the Assistant Secretary-General for Human Resources Management informed the Applicant that the Secretary-General had taken note of the Board's report and had decided to maintain the contested decision.

On 16 May 1988, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision not to renew the Applicant's fixed-term appointment denied the Applicant due process of law.

2. The Applicant's assignment to the Typing Pool on 23 September 1985 was a subterfuge since the Respondent had already decided to abolish the Unit.

3. The Applicant has sustained injury as a result of the harassment to which she was subjected.

Whereas the Respondent's principal contentions are:

1. The decision by the Administration to reassign the Applicant temporarily to the Typing Pool was a discretionary decision and did not violate any of the Applicant's rights.

2. The Applicant did not have a legal expectancy of the extension of her fixed-term appointment.

The Tribunal, having deliberated from 7 November to 16 November 1989, now pronounces the following judgement:

I. The Tribunal considers that the documentation in the case is sufficiently complete and would not entertain the Applicant's requests for testimony and for the further production of documents.

II. According to the Applicant, her separation from IDEP (African Institute for Economic Development) on 31 August 1986 was tainted by improper motives on the part of the Respondent and was fraught with irregular procedure, violations of Staff Regulations and Rules and finally, of her rights and expectations as a staff member with long years of satisfactory service. The Respondent, however, asserts that her separation was entirely regular because her post had been abolished as a result of a reorganization of IDEP and that as a holder of a fixed-term appointment, the Applicant was not entitled to continued employment.

III. In this context, the Tribunal considered a confidential memorandum dated 22 May 1986 from the Chief, Administration and Finance, IDEP, to the Executive Secretary of ECA and Chairman of the

IDEP Governing Council, on the subject of "Abolition of Posts and Separation of Staff". The memorandum makes the following specific comments on the Applicant:

"5. Miss Otelinda MONTEIRO-AJAVON

Miss AJAVON was not included among those recommended for separation in the ad hoc Committee's report. However, during 1985 her unbecoming conduct led to her redeployment to the Typing Pool as a Typist. With the recommended separation of ... and ... all the staff of the Typing Pool would have been done away with. Under normal circumstances, Miss Ajavon could have been redeployed to another Unit. In this regard, the only units left for consideration are:

a) The Administration

Her conduct in general and particularly in the Training and Research Unit has proved that she cannot be relied upon; she has no respect for her supervisors and always wants to take the law into her own hands. In the Unit, she was found not reliable in the sense that she was suspected to have made confidential information available to students and even incited them to riot. One such incident led to misbehaviour by one student who was ultimately dismissed from the Institute.

She is the type who only works when she wants to and seems to say 'I cannot be touched' because I have been with the Organization for a long time and therefore thinks she knows too much and wants to ignore the instructions of her supervisors and use her own discretion (...).

b) The Training and Research Unit as Typist

She cannot be redeployed to this Unit for same reasons given above which led to her being moved from the Unit in 1985. Moreover, she thinks she is too senior to be a Typist after her long service.

c) The General Service Section

This is a very sensitive area which cannot accept an unreliable staff member. Her temperament is such that she will not accept to serve under the Chief (who cannot be replaced by her) and is likely to rather organize the cleaners, watchmen, and other staff of the Section against management as well. Moreover as stated above, in the current situation, the Institute has to economize by using only one person for purchases.

When I wanted to redeploy her after her appeal, no supervisor wanted to accept her because they said she is too difficult and troublesome. Under these circumstances, I think the

Institute can very well do without her. Moreover with her character, which makes her less useful than she should be, the Institute can save a lot in funds by abolishing her post since she is the highest paid General Service staff member in the Institute (about US \$1,387.26 per month).

However, in view of her long service and the possibility of involving the Institute in a legal suit if separated, I would like first to consult the Administrative Review Unit of OPS [Office of Personnel Services], New York, before taking action to separate her if this recommendation is approved."

The above-mentioned memorandum formed the basis of all actions subsequently taken to separate the Applicant. The Tribunal notes that the serious accusations against the Applicant's conduct and attitude were not brought to her attention. Consequently, she was not in a position to refute them, nor were they the subject of a proper investigation.

IV. The Tribunal notes that some unpleasant incidents apparently took place - these too were not properly investigated. However, the Applicant's performance reports were satisfactory. Her transfer to the Typing Pool, when the Administration fully knew that the entire Typing Pool was going to be abolished was unfair to the Applicant and open to serious criticism.

V. The fact that fixed-term appointments - even for a staff member who held such appointments for a long time - do not normally carry any legal expectation of extension, did not justify, in the opinion of the Tribunal, the termination of the Applicant's employment in the way it was done in this case.

VI. The entire procedure leading to her separation was further vitiated by the argument that she was the highest paid member of the Typing Pool. This argument is not acceptable because the Applicant was not recruited for the Typing Pool and secondly, if the system of granting fixed-term appointments is used only, or even principally to save money, the system is obviously susceptible to abuse.

VII. The Respondent asserts that none of the departmental heads wished to employ the Applicant, but this statement is not supported or elaborated by evidence about who was specifically asked and what response each one gave. On the contrary, the Tribunal is left with the impression that the decision was already taken to get rid of the Applicant and reasons for doing so were found later.

VIII. On the foregoing grounds, the Tribunal concludes that the Applicant is entitled to compensation and puts the amount at US\$4,000.

IX. Accordingly, the Tribunal:

- (a) Orders the Respondent to pay the Applicant US\$4,000;
- (b) Rejects all other pleas.

X. As regards the Applicant's request for a disability benefit, she may pursue it before the appropriate organs of the United Nations Joint Staff Pension Fund which alone are competent to consider it.

(Signatures)

Roger PINTO
Vice-President, presiding

Samar SEN
Member

Ahmed OSMAN
Member

New York, 16 November 1989

R. Maria VICIEN-MILBURN

Executive Secretary