



Administrative Tribunal

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T/DEC/664*

22 July 1994

ENGLISH
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ADMINISTRATIVE TRIBUNAL

Judgement No. 664

Case No. 710: TREGGI

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding;

Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas at the request of Gian Carlo Treggi, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 31 January 1993 the time-limit for the filing of an application to the Tribunal;

Whereas, on 25 January 1993, the Applicant filed an application requesting the Tribunal, inter alia:

"(a) To rescind the decision of the Secretary-General to reject the Applicant's request for the reimbursement of the full amount he paid for the unaccompanied shipment of personal effects in connection with his return travel from home leave in 1991;

(b) To order the Secretary-General to reimburse the Applicant for the full amount requested in his original claim."

* Re-issued for technical reasons.

Whereas the Respondent filed his answer on 24 March 1993;

Whereas the Applicant filed written observations on 16 July 1993;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 25 March 1971, on a probationary appointment at the P-3, step 1 level, as an Administrative Officer, in what is now the Office of Human Resources Management. On 1 May 1972, his functional title was changed to Recruitment Officer and on 1 May 1973, his appointment was converted to permanent. The Applicant was promoted to the P-4 level, with effect from 1 April 1974. On 1 July 1978, he was transferred to the Department of Technical Cooperation for Development. He was promoted to the P-5 level, as a Senior Recruitment Officer, with effect from 1 April 1980 and on 1 May 1984, his functional title became Chief of Unit. The Applicant separated from the service of the United Nations on 1 May 1992.

In connection with the Applicant's home leave to Rome, Italy, in June 1991, the Executive Office issued a travel authorization stating that the Applicant was authorized "110 pounds (50 kilograms) per e/w [each way]" via surface for the unaccompanied shipment of his personal effects.

Upon his return from home leave, the Applicant submitted a claim for reimbursement in the amount of 400,000 lira (\$299.63 at the current rate of exchange in force at the time). He attached a receipt stating that the contents of this shipment weighed 48 kilograms.

When the claim was processed, the Administration reimbursed the Applicant only \$156,05. The Applicant's allotment for an unaccompanied shipment via air was governed by the "one-half rule", (that is, half the amount allowed for surface shipments with no costs to be paid for packing, crating, unpacking and uncrating, only reasonable cost for cartage). The Traffic Unit cited staff rule 107.21 which governs excess baggage and unaccompanied shipments.

On 18 November 1991, the Applicant wrote to the Chief, Traffic Unit, Office of General Services, requesting a re-evaluation of his claim and arguing that the data contained in the airway bill was unreliable. In a reply dated 19 November 1991, the Chief, Traffic Unit, stated that "the Traffic Unit can only take action on the documentation presented to it and work within the entitlements on the staff member's travel authorization." In essence, he confirmed the original allowance, which was less than the amount actually paid by the Applicant.

On 18 December 1991, the Applicant requested the Secretary-General to initiate an administrative review of this decision. Having received no substantive reply, on 23 January 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 5 June 1992. Its considerations, conclusion and recommendation read as follows:

"Considerations

15. The Panel noted that the Appellant had authorization for a surface shipment in accordance with staff rule 107.21 which permits reimbursement for a maximum of 50 kilos and he exercised the option to convert this to a shipment via air which is governed by the 'one-half rule'. Thus his reimbursable weight allowance was no more than 25 kilos. He actually sent a shipment that weighed 44 kilos, exceeding his allowance by 19 kilos.

...

17. The Panel could find no basis for the argument that this shipment should have been based on the cubic volume because such is not substantiated by the accompanying documentation which refers to weight.

18. As to the allegation that the per kilo shipping price was too low to be realistic, the Panel notes that the shipper was selected by the Appellant presumably because his quoted per kilo price was reasonable. However, this is not the issue and a greater or lesser per kilo charge would not affect the facts contested by the Appellant, only the relative amounts that would have to be paid.

Conclusion and Recommendation

19. For the reasons cited above, the Panel recommends that the appeal be rejected."

On 16 June 1992, the Assistant Secretary-General for Human Resources Management transmitted to the Applicant a copy of the JAB report and informed him that the Secretary-General had decided to accept the Board's recommendation and to reject his appeal.

On 25 January 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

Since the volume limit of the Applicant's shipment was established by staff rule 107.21 and was not exceeded, he should be reimbursed the full amount he paid for the unaccompanied shipment of his personal effects, irrespective of the actual weight of the shipment.

Whereas the Respondent's principal contention is:

The amount of reimbursement received by the Applicant for expenses incurred as a result of the unaccompanied shipment of his personal effects was calculated in compliance with the applicable staff rule. The Applicant's rights were thus not violated, even though he considers the amount awarded inadequate.

The Tribunal, having deliberated from 30 June to 22 July 1994, now pronounces the following judgement:

I. On the occasion of the Applicant's departure for Rome on home leave in June 1991, the Executive Office issued a travel authorization stating that the

Applicant could ship from New York to Rome, and vice versa, unaccompanied personal effects weighing “110 pounds (50 kilograms) per e/w [each way]” via surface, that is, by land or by sea.

II. When returning from home leave, the Applicant decided to ship his personal effects by air as unaccompanied baggage. He then submitted a claim for reimbursement in the amount of 400,000 lira (\$299.63) at the rate of exchange in force at that time). The Administration reimbursed the Applicant only \$156.05, corresponding to 25 kilos, considering that unaccompanied shipment by air was governed by the “one-half rule” (that is, half the amount allowed for surface shipments). The Administration took that decision on the basis of staff rule 107.21(j), concerning excess baggage and unaccompanied shipments, which states among other things that:

“(j) Where surface shipment ... is the most economical means of transport, such shipment may be converted to air freights on the basis of one half of the weight or volume of the authorized surface entitlement ...”.

III. The Applicant is claiming reimbursement of the full amount he paid for the unaccompanied shipment of his personal effects, irrespective of the actual weight of the shipment. He claims that the volume limit of his shipment, fixed in accordance with staff rule 107.21(e), was not exceeded. That rule states, among other things,

“(e) When the authorized travel is by air or by land, charges for unaccompanied shipment of personal baggage relating to travel on home leave, family visit or education grant may be reimbursed up to a maximum, including the weight or volume of packing but excluding crating and lift vans, of:

- (i) 50 kilograms (110 pounds) or 0.31 cubic metres (11 cubic feet) by surface means per person in respect of each journey, except as provided in subparagraph (ii) below. ...”

IV. The Respondent considers that the amount of reimbursement received by the Applicant for expenses incurred by the unaccompanied air shipment of his personal effects was calculated in compliance with the applicable staff rule. The Respondent concludes that the Applicant’s rights were thus not violated, even though he considers the amount awarded to be inadequate.

V. The Tribunal notes that according to staff rule 107.21(e) (I) unaccompanied shipments are subject to two limits: a maximum volume and a maximum weight, i.e. “50 kilograms (110 pounds) or 0.31 cubic metres (11 cubic feet) by surface means per person in respect of each journey”.

The Tribunal further notes that for an unaccompanied air shipment the Applicant’s entitlement is subject to the “one-half rule” mentioned in paragraph II above, i.e. “one half of the weight or volume of the authorized surface entitlement”.

Upon departing on home leave the Applicant was authorized 50 kilograms via surface for the unaccompanied shipment of his personal effects, but he decided to ship by air a package containing personal effects weighing 48 kilos, for which he claimed full reimbursement.

The Applicant argues that, having respected the volume limit, he is not required to respect the weight limit. Consequently, he should be fully reimbursed.

Staff rule 107.21(e) lends itself to more than one interpretation. However, the Administration construes it as meaning that the two maximum limits mentioned (weight and volume) must both be respected.

VI. Any application of a rule necessarily entails interpretation. However, this

interpretation must not contradict either the letter or the spirit of the provision interpreted. In the event of a dispute, it is for the Tribunal to determine whether the Administration's interpretation of a given provision respects this principle.

In this case, the Tribunal considers that the Administration's right to interpret its own rules was correctly exercised and that the interpretation given to staff rule 107.21(e) contradicts neither the letter nor the spirit of that provision.

The reference to "weight or volume" in the Staff Rules does not confirm the Applicant's position if it is read in the context of the words "charges ... may be reimbursed" (staff rule 107.21(e)). The method used for authorized shipment, on the basis of either weight or volume, determines the limits applicable. Neither limit can be exceeded unless special authorization is obtained. Otherwise, the Administration could not verify in advance the amounts of reimbursement authorized. A staff member is not free to modify unilaterally what has been authorized and to impose on the Administration a charge greater than that which it has accepted.

The Tribunal therefore concludes that the Administration was entitled to require the Applicant to respect the weight and volume limits and hence to deduce that the Applicant had forfeited his right to reimbursement because he had exceeded the authorized weight limit.

VII. The Tribunal concludes that in acting in this way, the Administration correctly applied the relevant provisions of the Staff Rules.

VIII. For the foregoing reasons, the application is rejected.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

Geneva, 22 July 1994

R. Maria VICIEN-MILBURN
Executive Secretary