

ADMINISTRATIVE TRIBUNAL

Judgement No. 838

Case No. 927: CRUZ COUSILLAS

Against: The Secretary-General
of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Hubert Thierry, President; Mr. Mikuin Leliel Balanda,
Vice-President; Mr. Julio Barboza;

Whereas, on 12 July 1996, Aurelio Cruz Cousillas, a former staff member of
the United Nations, filed an application in which he requested the Tribunal to:

"... find and rule:

(a) That the compensation offered by the Secretary-General to the
Applicant as a result of an interpretation of the applicable rules
that has been declared and recognized to be unduly restrictive, is
clearly insufficient in comparison to the actual financial loss
caused, particularly because of the persistence of that loss over
time;

(b) That the Applicant paid a lump sum of US\$ 50,000 by way of
overall compensation for the injury caused."

Whereas the Respondent filed his answer on 20 November 1996;

Whereas the Applicant filed written comments on 29 January 1997;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Office at Geneva
(UNOG) on 23 November 1972, on a short-term contract, as warehouseman at the G-1
level. His contract was renewed on an intermittent basis until
16 November 1973. On 10 January 1977, the Applicant again entered the service
of the United Nations as operator at the G-1 level. His short-term contract was

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extended until 13 March 1983. During this time the Applicant carried out various functions. He was promoted to the G-2 level on 17 May 1980 at which point he was carrying out the duties of chauffeur, and to the G-3 level on 14 March 1983 as finance clerk. Starting on 14 March 1983 the Applicant was given a 9-month fixed-term contract which was renewed regularly until 31 August 1994 when he retired. During that time he was promoted to the G-4 level on 1 April 1984, then to the G-5 level on 1 May 1991, as special administrative clerk within the Financial Resources Management Service.

On 27 January 1994, the Applicant asked the Chief of the Financial Resources Management Service for an extension beyond the statutory retirement age in order to improve his retirement benefits, in accordance with the relevant provisions of General Assembly resolution 35/210. His request was supported by the Chief of the Financial Resources Management Service.

By a memorandum dated 17 February 1994 addressed to the Chief, Personnel Service at UNOG, the Chief of the Financial Resources Management Service, after reading the Applicant's performance evaluation reports and the recommendations of his immediate supervisors, recommended that the Applicant's request be granted.

On 27 June 1994, the Chief of the Personnel Administration Section informed the Chief of the Financial Resources Management Service that the Working Group set up to examine requests for extensions of service for staff in the General Service category beyond the retirement age had met on 21 June 1994 and had decided that under the terms of General Assembly resolution 35/210, the Applicant was not eligible for extension of his appointment since he had entered the service of the United Nations after December 1978. Consequently, the Working Group had decided not to recommend the extension of his contract beyond 31 August 1994. On 30 June 1994, the Chief of the Personnel Administration Section confirmed to the Applicant that the date of his separation from service

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would be 31 August 1994.

By a memorandum dated 5 July 1994, addressed to the Chief of the Personnel Administration Section, the Chief of the Financial Resources Management Service requested that the Working Group reconsider the Applicant's case. The Chief of the Financial Resources Management Service pointed out that the Applicant had been employed by the United Nations since 1973 (sic) and that he was considered a participant in the Pension Fund since 1 January 1977.

However, in a memorandum dated 16 August 1994 addressed to the Chief of the Financial Resources Management Service, the Chief of the Personnel Administration Section said that the Chairman of the Superannuation Panel felt that there were no new elements which would warrant reopening of the Applicant's case and noted that the latter had been the subject of a lengthy review at the meetings held on 25 May and 21 June. Consequently he confirmed that the Applicant's appointment would come to an end on 31 August 1994.

In a letter dated 22 September 1994 addressed to the Secretary-General, the Applicant requested, pursuant to rule 111.2 of the Staff Rules, that the contested decision be reviewed.

On 26 October, the Chief of the Administrative Review Unit acknowledged receipt of the Applicant's request and informed him that the period of two months specified for the relevant review in staff rule 111.2(a) (ii), would begin to run from 25 October 1994. Not having received a reply from the Secretary-General within the specified period, the Applicant filed an appeal with the Joint Appeals Board by a memorandum dated 24 January 1995.

The Board adopted its report on 13 December 1995. Its conclusions and recommendations read as follows:

"Conclusions and recommendations:

"27. The Panel concludes unanimously that, in considering the

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Applicant's request for an extension beyond retirement age, the Working Group does not appear to have taken into account all the information available to it; members of the Panel disagree mainly with the Working Group's interpretation of the notion of 'being in the service' of the United Nations.

"28. Accordingly, the Panel makes a unanimous recommendation in favour of the appeal. The members of the Panel propose that the Applicant be awarded a lump sum equivalent to two months of his last net salary as compensation for the injury suffered, bearing in mind the fact that the extension beyond 60 years had been requested for a period of four months."

On 14 February 1996, the Under-Secretary-General for Administration and Management sent a copy of the report of the Joint Appeals Board to the Applicant and informed him as follows:

"The Secretary-General has reviewed your request in the light of the Panel's conclusions, particularly its interpretation of the notion of service contained in resolution A/35/210 which, in the Panel's view, applies to your case. The latter, noting that you were, indeed, in the service of the United Nations since 1972, and were a participant in the Pension Fund for the said years of service, recognizes your eligibility under the terms of resolution A/35/210 and accedes to your request. The Secretary-General takes note of this interpretation of the notion of service applicable to the period under dispute and has decided to endorse the Panel's unanimous conclusions regarding your eligibility and to award you a lump sum payment equivalent to two months of your final net salary."

On 12 July 1996, the Applicant filed with the Tribunal the above-mentioned application.

Whereas the Applicant's main contention is as follows:

The Applicant's situation makes him eligible for the special regime regarding extension beyond the statutory retirement age set forth in section VI

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of General Assembly resolution A/35/210 of 17 December 1980.

Whereas the Respondent's main contentions are as follows:

1. There is no right to extensions beyond the statutory retirement age. A recommendation for a four month extension is not an undertaking to continue Applicant in service until age 62 years.

2. The denial of this recommendation was in good faith although ultimately based on a mistaken view of the rules.

3. The Joint Appeals Board's recommendation of two months' compensation is reasonable and the Secretary-General's decision to accept that recommendation does not violate the rights of Applicant.

The Tribunal, having deliberated from 8 July to 1 August 1997, now pronounces the following judgement:

I. The Applicant is a former staff member of the United Nations who was employed in Geneva. He is asking to be compensated as a result of the Administration's refusal to extend his contract for four months beyond the statutory retirement age.

II. The Joint Appeals Board considered that the Working Group established to review the Applicant's request for an extension of his contract beyond the statutory retirement age in accordance with General Assembly resolution 35/210 of 17 December 1980, concerning flexibility in the granting of extensions, wrongly considered that the Applicant was not eligible, since he had entered into service in 1978. The Joint Appeals Board therefore recommended that the Applicant should be awarded compensation in the amount of two months of his net base salary. The Secretary-General accepted the recommendation. It is this decision against which the Applicant has filed an appeal with the Tribunal.

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III. In his pleas the Applicant requests that he be awarded the sum of US\$ 50,000 by way of compensation for the loss of benefits he would have had if his contract had been extended beyond the statutory retirement age, as requested.

IV. The Respondent maintains that there is no right to any extension beyond the statutory retirement age; that a recommendation for a four month extension is not an undertaking to continue Applicant in service until the age of 62; that Respondent acted in good faith in denying Applicant's request for extension. Furthermore, Respondent considers the compensation recommended by the Joint Appeals Board as adequate, and it has already been paid.

V. The Tribunal notes, first, that there is no right for staff members to extension beyond the statutory retirement age, which has been set at 60. Nevertheless, the Tribunal agrees with the Joint Appeals Board regarding the erroneous interpretation of the above-mentioned resolution. Consequently, and because of the prejudicial effects of that error, the Tribunal decides to award the Applicant four months of his last net base salary, in addition to the two months already received pursuant to the Secretary-General's decision of 14 February 1996.

VI. For these reasons the Tribunal orders Respondent to pay the Applicant compensation in the amount of four months' net base salary in effect on 14 February 1996.

VII. The Tribunal rejects the Applicant's other pleas.

(Signatures)

Hubert THIERRY
President

Mikuin Leliel BALANDA
Vice-president

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Julio BARBOZA

Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN

Secretary
