



Administrative Tribunal

Distr.
LIMITED

T/DEC/904*

20 November 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 904

Case No. 988: NOYEN

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Mayer Gabay, First Vice-President, presiding; Ms. Deborah Taylor Ashford, Second Vice-President; Mr. Kevin Haugh;
Whereas, on 3 September 1997, Gerardus A. Noyen, a former staff member of the
United Nations, filed an application requesting the Tribunal:

- “1. [To] decide that the conclusion of the Panel of the Joint Appeals Board ... was incorrect.
2. [To] order the Respondent to pay back to the Appellant the life insurance premium plus interest illegally withheld from the Appellant's pay-check during the period 1976-1980.
3. [To] order the Respondent to pay back to the Appellant the excess life insurance premium plus interest, withheld from the Appellant's pay-check. The excess premium being the difference between the statutory legal limit of \$0.60/\$1,000 and the premium required to sustain a responsible loss/premium ratio.

* Re-issued for technical reasons.

4. [To] order the Respondent to pay the Appellant punitive charges, [at a] level to be determined by the Tribunal, for [delays and for the Respondent's misplacement of the Applicant's files.]”

Whereas the Respondent filed his answer on 23 July 1998;

Whereas, on 28 October 1998, the Tribunal put a question to the Applicant;

Whereas, on 28 October 1998, the Tribunal put questions to the Respondent, to which he provided answers on 29 October and 2 November 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 1 July 1973, as a Special Technical Advisor (Drilling) in the Department of Economic and Social Affairs, on a two-year intermediate-term appointment, at the L-4 level, under the 200 Series of the Staff Rules. His appointment was extended several times and was subsequently reclassified to the L-5 and L-6 levels on 1 July 1978 and 1 August 1988, respectively. On 31 March 1994, he separated from service upon the expiration of his appointment.

During the period between 1970 and 1980, staff appointed under the 200 Series were required to pay higher monthly life insurance premiums than staff appointed under the 100 Series. In 1980, the staff member contribution rate was reset so that staff appointed under the 200 Series would not be paying higher premiums than 100 Series staff.

On 3 November 1983, eleven 200 Series staff members, including the Applicant, wrote to the Controller, requesting that surplus life insurance funds be distributed to 200 Series staff members who had worked at the UN at any time between 1976 and 1980. The staff members' letter states, “Please be advised that in the event that no satisfactory response is received from your office within 30 days of the date of this letter, the undersigned will consider it an adverse administrative decision.” In the absence of any response, on 29 February 1984, the group requested the Secretary-General to review the administrative decision not to

distribute the surplus funds to the staff members in question.

No appeal was lodged with the Joint Appeals Board (JAB) in connection with this request for review. According to a note written by the Applicant dated 7 April 1987, “the appeal process was stopped when a phone call was received from [the Controller’s] office informing us that a system for disbursement was being established.”

On 13 April 1987, the President of the Staff Committee wrote to the Controller, requesting that the Administration “establish a mechanism for the distribution to [the Applicant and 200 Series personnel employed by the UN between 1976 and 1980] of the surplus life insurance funds.” On 1 May 1987, the Chairman, UNDP/UNFPA Staff Council, wrote to the Controller to reiterate the request for “an immediate refund to the 200 Series personnel concerned of the full amount of the excess contributions.”

On 14 and 15 May 1987, the Deputy Director, ad interim, Division for Policy Coordination, Office of Financial Services, informed the Chairman, UNDP/UNFPA, Staff Council, and the President, Staff Committee, respectively, as follows:

“We have some two weeks ago assigned a staff member full time to this project [of distributing the surplus funds] and are currently in the process of establishing a procedure for the identification of current and former eligible staff members with a view to distribute the life insurance surplus. We are hopeful to start effecting actual payments in the very near future to those eligible staff members still on board who were payrolled from Headquarters during the period 1976-1980 and are still on the Headquarters payroll”.

On 11 March 1994, the Chief, Insurance Section, Office of Programme Planning, Budget and Accounts (OPPBA), replied to a memorandum from the Applicant, dated 10 February 1994, and informed the Applicant as follows:

“From the review of the records which I have been able to carry out to date, I can find no evidence that the [distribution of surplus life insurance funds] to which [the Deputy Director, a.i., Division for Policy Coordination, OFS] referred [in his 14 and 15 May 1987 letters] was conducted. I can also confirm that, to my knowledge, no subsequent action was taken in this respect.

In this connection, I would like to mention that an opinion was rendered by the Office of Legal Affairs ... [which] concluded that:

‘The Aetna Contract does not place any legal obligation on the UN to distribute the “accumulated reserves” in cash to the project personnel ... In summary, we have seen nothing in the Aetna Contract nor in the contractual arrangement between the UN and Project Personnel nor in the N.Y. State insurance laws which would, as a matter of law, require the UN to distribute the “accumulated reserves” in cash to the project personnel and, moreover, such distribution might be questioned if distribution to individuals employed at the particular time would detract from the benefits of the group as a whole.’”

On 17 March 1994, the Applicant requested the Secretary-General to review the administrative decision not to return the excess life insurance premiums that the Applicant had paid between September 1976 and September 1980.

On 20 April 1994, the Chief, Insurance Section, OPPBF, advised the Chief, Administrative Review Unit, that, having reviewed the Applicant's finance and insurance files and having taken into account the levels of his pensionable remuneration during the years in question, he had calculated that the total excess premiums paid by the Applicant would amount to \$443.19, and that compounded with interest at 5 per cent per annum, the value of that amount in April 1994, would have been \$921.36.

On 19 August 1994, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 15 April 1997. Its conclusions and recommendation read, in part, as follows:

“Conclusions and Recommendation

29. Addressing the issue of receivability, the Panel concluded that the 11 March 1994 memorandum from the Insurance Section Chief to the Appellant had conveyed information about past decisions pertaining to the life insurance surplus fund. The Panel concluded that the Insurance Section Chief had not taken any new decisions about insurance premium

reimbursements nor had he transmitted any new administrative decisions to the Appellant.

30. The Panel concluded that there had been several instances when decisions about insurance fund matters had been conveyed to or acknowledged by the Appellant and/or pertinent staff representatives. Among these were the 29 February 1984 request for an administrative review filed by a group of staff members among whom was the Appellant (...); the 13 April 1987 memorandum to the Controller from the Staff Committee President; the 1 May 1987 letter to the Controller from the Chairman, UNDP/UNFPA Staff Council; and even the Appellant's own request that he be reinstated in the group life insurance plan after he had learned that an administrative decision had been taken in 1979 to amend and to adjust the life insurance premiums paid by 200 Series staff. The Panel concluded that, whether the Appellant had submitted his appeal as an individual staff member or as a member of an interested group, he had received notice of its subject matter well within the time (within two months of having received written notification of the contested decision) for filing an appeal as set forth in staff rule 111.2(a). Therefore, the Panel concluded that this appeal is time-barred. Accordingly, the Panel makes no recommendation in favour of this appeal.

...”

On 7 July 1997, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

“The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Board's conclusion that the memorandum of 11 March 1994 from the Chief of the Insurance Section to you had conveyed information about past decisions pertaining to the life insurance surplus fund, and that the Chief of the Insurance Section had not taken any new decisions about insurance premium reimbursements nor had he transmitted any new administrative decisions to you. The Secretary-General has also taken note of the Board's conclusion that there had been several instances when decisions about insurance fund matters had been conveyed to or acknowledged by you and/or pertinent staff representatives; and that, whether you had submitted your appeal as an individual staff member or as a member of an interested group, you had received notice of its subject matter well within the time for filing an appeal as set forth in staff rule 111.2(a). The Secretary-General has finally taken note of the Board's

conclusion that your appeal was time-barred and of the Board's unanimous recommendation to make no recommendation in favour of the appeal. The Secretary-General has accordingly decided to accept this recommendation and to take no further action regarding your case.”

On 3 September 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant is entitled to a reimbursement of excess premiums illegally withheld from his paycheck between 1 September 1976 and 1 September 1980.
2. The Respondent acted in bad faith by representing to the staff that he was in the process of establishing a procedure to distribute the surplus life insurance funds, yet never implementing such procedure.
3. Any procedural delays were caused by the Respondent.

Whereas the Respondent's principal contentions are:

1. The appeal is time-barred.
2. The Applicant's plea concerning misplaced files is not receivable, as he did not raise the issue before the JAB.

The Tribunal, having deliberated from 27 October to 20 November 1998, now pronounces the following judgement:

- I. The Applicant appeals from a decision of the Secretary-General dated 7 July 1997, adopting a unanimous Joint Appeals Board (JAB) recommendation that the Applicant's appeal was time-barred. The Applicant claims that during the period between 1976 and 1980, the Respondent illegally deducted from his pay-check an

excessive amount of money for the premiums he was paying for life insurance. The Applicant asserts that not only was the amount deducted from his pay-check excessive, when compared to another category of staff, but that it exceeded the statutory employee contribution limit of \$0.60/\$1,000 under

New York law as well as the premium required to sustain a “responsible loss/premium ratio”. The Applicant asks the Tribunal to order the Respondent to repay the excess amounts and to pay punitive damages.

II. In July 1973, when the Applicant entered the service of the Organization, he was granted an appointment under the 200 Series of the Staff Rules. During the period between 1970 and 1980, 200 Series staff had been charged higher monthly life insurance rates than those paid by 100 Series staff. In 1980, the Administration and Aetna, the insurance carrier, re-set the 200 Series staff contribution rate so that neither category of staff would pay more than the other.

III. The Applicant demonstrates that he took numerous steps in order to obtain the reimbursement of the excess contribution:

1. On 3 November 1983 and 29 February 1984, a number of 200 Series staff members, including the Applicant, wrote a letter to the Controller, and to the Secretary-General respectively, requesting that surplus life insurance funds be distributed to 200 Series staff members who had worked at the UN between 1976 and 1980. The Applicant was then informed that a system for the reimbursement of this surplus was being established.

2. On 13 April 1987 and 1 May 1987, the President of the Staff Committee and the Chairman UNDP/UNFPA Staff Council, respectively, requested the Controller to immediately commence the reimbursement process. Both indicated that, in the event that no satisfactory response was received, the staff would initiate the appeals process. On 14 and 15 May 1987, the Chairman, UNDP/UNFPA Staff Council, and the President of the Staff Committee, respectively, were informed by the Respondent, that for some two weeks, the Office of Financial Services had assigned a staff member full-time to this project and

that the Respondent would commence effecting actual payments in the very near future. In the light of this reply, no appeal was submitted.

3. On 11 March 1994, in reply to the Applicant's letter of 10 February 1994, the Chief of the Insurance Section, OPPBF, informed the Applicant that no distribution of life insurance surplus funds had been made and that no subsequent action had been taken. Thereafter, on 17 March 1994, the Applicant requested the Secretary-General for an administrative review of the decision, and on 19 August 1994, he lodged an appeal with the JAB.

IV. The Tribunal accepts the general principle that a debtor who delays in paying a debt cannot use such delay as a basis for arguing that the creditor's renewed demand for payment is time-barred. That same principle applies to a promise to pay. The Tribunal finds that the Applicant had taken numerous steps in order to obtain reimbursement of the surplus life insurance funds, that he was led to believe that the Respondent was taking appropriate measures to establish a mechanism for payment of such funds, and that the Applicant remained within his rights to renew his demand for payment on 10 February 1994. The administrative decision that was communicated to the Applicant on 11 March 1994 was clearly a new decision, against which he could appeal. Although a prior decision had been communicated to the Applicant and others suggesting that the funds in question would be distributed to 200 Series personnel, the Applicant was informed on 11 March 1994 of a contrary decision: that no action had been, nor would be, taken to distribute those funds. The Applicant's request for review on 17 March 1994 was, therefore, made well within the prescribed time limits provided for under staff rule 111.2(a).

V. It appears from the Respondent's answers to the questions put by the Tribunal, that any excess amount of money paid by the employees, is generally used for the sole benefit of the employees, as a group, and not for the benefit of an individual or particular employee.

It means that the Applicant, as a member of the group of employees, has enjoyed a system of reduced premiums over the years of his employment.

VI. However, since the Applicant had been promised several times that his overpayment during the relevant period would be reimbursed and the Respondent consistently delayed his response and eventually did not comply with that promise, the Applicant should be compensated.

VII. Based on the foregoing, the Tribunal orders the Respondent to pay the Applicant compensation in the sum of US\$1,000.

VIII. The remainder of the application is rejected.

(Signatures)

Mayer GABAY
First Vice-President, presiding

Deborah TAYLOR ASHFORD
Second Vice-President

Kevin HAUGH
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary