



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 972

Case No. 981: ABDULHADI

Against: The Commissioner General
of the United Nations
Relief and Works Agency
For Palestine Refugees in the
Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, Vice-President, presiding; Mr. Chittharanjan Felix
Amerasinghe; Mr. Victor Yenyi Olungu;

Whereas in Judgement No. 877, delivered on 31 July 1998, the Tribunal decided that the
Respondent should:

- “1. Finds in favour of the Applicant and orders the rescission of the decision of the Commissioner-General, dated 11 January 1995, to terminate the Applicant's permanent appointment;
2. Orders that the Applicant be reinstated in a position with the same grade and at the same step that she held when she was separated, with full payment of salary and emoluments from the date of her separation from service, less her earnings from other employment, if any;
3. Should the Commissioner-General, within 30 days of the notification of this judgement decide, in the interest of the Agency, that the Applicant shall be compensated without further action being taken in her case, in accordance with article 9 of its Statute, the Tribunal fixes the compensation to be paid to the Applicant at two years of her net base

salary, at the rate in effect at the time of her separation from service.
 ..."

Whereas, on 27 April 1999, Maysaa' Ahmed Abdulhadi, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 5 September 1999, the Applicant, after making the necessary corrections, again filed an application for interpretation of Judgement No. 877 in which she requested the Tribunal:

"i. That [she be] reinstated to a post commensurate with her qualifications, and, should Tribunal find otherwise,

ii. That payment of compensation as ordered by the Tribunal [be] paid in US\$ at the exchange rate available at the time of separation."

Whereas the Respondent filed his answer on 8 March 2000;

Whereas the facts in the case have been set forth in Judgement No..877

Whereas the Applicant's principal contentions are:

1. The Commissioner-General had no authority to decide not to reinstate the Applicant since the decision was not made within the required 30-day period and was therefore time-barred.
2. The decision not to reinstate the Applicant was arbitrary and unlawful.
3. The compensation paid to the Applicant was improperly calculated and should have been paid in dollars based on the Syrian pound/dollar exchange rate in effect at the date of separation from service

Whereas the Respondent's principal contentions are:

1. The decision of the Respondent not to reinstate the Applicant was timely and made within the requisite 30-day period from the date of receipt of the Tribunal's judgement in the Applicant's case.
2. No evidence was proffered by the Applicant to demonstrate that the decision not to reinstate her was rendered in bad faith or improperly motivated.
3. The decision not to reinstate the Applicant was made at the Respondent's option granted pursuant to the Tribunal's judgement in case No. 877 and was properly exercised in the best interest of the Agency.
4. The Applicant's compensation was properly paid in Syrian pounds, the currency of her duty station, in accordance with standard practice.

The Tribunal, having deliberated from 2 to 17 November 2000, now pronounces the following judgement:

I. The Tribunal notes that the Applicant contests, firstly, the Respondent's decision, taken at his discretion and in the interest of the Organization, that she should be compensated rather than reinstated.

The Tribunal reaffirms in this regard that article 9 of its Statute confers on the Secretary-General discretionary power to assess the interest of the United Nations. However, this discretion is not absolute, although the Tribunal may intervene only when there is a clearly established abuse of power or when the grounds for his decision include factors that are not relevant. In this case, the Tribunal has not discerned in the Administration's decision any abuse of power or any other irrelevant factor: the Administration, in choosing the option of compensating the Applicant, faithfully executed the Tribunal's decision. Moreover, with regard to the Applicant's allegation that the Respondent exercised the option after more than 30 days had elapsed, the Tribunal, having checked the Respondent's statement, finds that statement to be accurate.

II. Regarding the receivability of the application, the Tribunal holds that it is competent to

interpret its own judgements, even though no part of its Statute or rules of procedure so provides. In accordance with the general principles of law, it believes that such competence is encompassed in the jurisdictional function of a tribunal: Judgements No. 61, *Crawford* (1955), and No. 366, *Sabatier* (1986).

III. The Tribunal notes that the operative part of its Judgement No. 877 is worded as follows:

“1. Finds in favour of the Applicant and orders the rescission of the decision of the Commissioner-General, dated 11 January 1995, to terminate the Applicant’s permanent appointment;

2. Orders that the Applicant be reinstated in a position with the same grade and at the same step that she held when she was separated, with full payment of salary and emoluments from the date of her separation from service, less her earnings from other employment, if any;

3. Should the Commissioner-General, within 30 days of the notification of this judgement decide, in the interest of the Agency, that the Applicant shall be compensated without further action being taken in her case, in accordance with article 9 of its Statute, the Tribunal fixes the compensation to be paid to the Applicant at two years of her net base salary, at the rate in effect at the time of her separation from service;”

The Tribunal will not dwell on the interpretation of the concept of “net base salary”, which is quite clear. Net base salary is the salary that the staff member receives at the end of a given period, after the mandatory deductions in his or her case. Contrary to the Applicant’s belief, this idea is reflected in article 9 of the Statute of the Tribunal.

As to the concept of the value of the salary at the time of separation, the Tribunal considers that, in deciding on the alternative to reinstatement, its intention was to restore the Applicant’s career in financial terms. It follows that the operative part of the judgement relating to the value of the salary at the time of separation cannot be interpreted in a manner likely to cause financial loss to the Applicant, since this would be a contradiction in terms.

Taking into account the continuous devaluation of the Syrian currency, the Tribunal interprets the concept of the value of the salary at the time of separation as requiring that the

compensation should be calculated in a standard currency whose par value varies little: the United States dollar.

IV. For the foregoing reasons, the Tribunal:

- Declares that the compensation of two years' net base salary is equivalent to the value of the salary in United States dollars, at the United Nations exchange rate on the date of separation from service, after deduction of the amount already received by the Applicant.
- Rejects all other pleas.

(Signatures)

Julio BARBOZA
Vice-president, presiding

Chittharanjan Felix AMERASINGHE
Member

Victor YENYI OLUNGU
Member

New York, 17 November 2000

Maritza STRUYVENBERG
Executive Secretary