United Nations AT/DEC/1228

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1228

Case No. 1201 Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Ms. Jacqueline Scott; Mr. Goh Joon Seng;

Whereas, on 27 October and 2 December 2003, respectively, a former staff member of the United Nations filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 28 April 2004, the Applicant, after making the necessary corrections, again filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 1134, rendered by the Tribunal on 25 July 2003;

Whereas the Application contained pleas which read, in part, as follows:

"**With respect to competence, the Applicant respectfully requests the Tribunal to take the following preliminary and provisional measures and decisions:**

…

3. [To] … grant oral proceedings and allow statements to be taken;

4. To … declare Judgement [No.] 1134 null and void. …

5. To ask the Respondent to provide: … [specified documents].

On procedures, to find and rule that

1. The Respondent must make available to the Applicant a copy of the 20 June 1997 secret memo …;

2. The entire case should be remanded to the Respondent to conduct a review of the case, as initially requested …

…

6. The fact that the Applicant was not allowed to inspect his files before the consideration of the case by the Tribunal was a deliberate violation of the Rules of the Tribunal …;

7. … As … the Applicant believes that … the Tribunal never actually considered [his second] case, it should do so now;

…

16. To avoid a repeat of what happened the first time around with 'Judgement [No.] 1134', and as a matter of the inevitable need for transparency this time, the Applicant asks the Tribunal to hold oral proceedings an opportunity for cross-examination, and, allow the process to be closely scrutinized by representatives of a number of organizations (human rights, civil rights, judicial watch and labor) to be named by the Applicant;

…

21. The threat hoax by … [the] Executive Secretary of the Tribunal … creates conflict of interest and should bar her as well as the other members of the [Tribunal secretariat] who allegedly felt threatened by the Applicant, from any further involvement with this case …

…

On the merits, to find and rule/adjudge and declare that:

…

8. The Tribunal ignored a number of violations of basic legal procedures committed by the Joint Appeals Board …;

…

12. By accepting the Respondent's version of events concerning the facts leading to his decision not to renew the Applicant's contract, … the Tribunal deliberately looked the other way and ignored his obligation to see that due process is respected, so that he could favor the Respondent;

…"

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 September 2004;

Whereas the Respondent filed his Answer on 21 September 2004;

Whereas the Applicant filed Written Observations on 30 October 2004;

Whereas, on 28 June 2005, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case were set forth in Judgement No. 1134.

Whereas the Applicant's principal contentions are:

1. In its Judgement No. 1134, the Tribunal failed to uphold the core values and principles of the Organization.

2. The Applicant's case should be reconsidered by a different panel of the Tribunal as serious irregularities occurred during the Tribunal's original consideration of the Applicant's case.

Whereas the Respondent's principal contention is:

The Applicant failed to introduce any fact of a decisive nature which was unknown to the Tribunal and to the Applicant at the time Judgement No. 1134 was rendered and, accordingly, his request for a revision of that Judgement is without merit.

The Tribunal, having deliberated from 28 June to 22 July 2005, now pronounces the following Judgement:

I. The Applicant has filed an Application for revision of Judgement No. 1134, requesting the Tribunal to declare that Judgement null and void and resubmitting, in its entirety, his case to be reconsidered by the Tribunal.

II. As the Tribunal has previously held in Judgement No. 1165, *Shehabi* (2004):

> "Article 12 of the Statute of the Tribunal sets forth the circumstances under which a judgement may be revised. Generally, judgements may be revised in two circumstances: (1) upon 'the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence'; and, (2) in the case of clerical/arithmetic mistakes or errors arising from any accidental slip or omission in a judgment. 'Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.'
>
> … In the first case, the newly discovered fact must be one that is sufficiently important to have affected the Tribunal's decision and which was unknown … to the Applicant [and] to the Tribunal at the time of the original judgement. (See Judgement No. 556, *Coulibaly*, (1992), citing Judgement No. 303, *Panis* (1983).)

In the second case,

> 'applications for correction of clerical mistakes have no purpose other than to amend such mistakes in the text of a judgement. In fact, such mistakes may be typographical or arithmetical (affecting, for example, the amount of compensation) or they may result from an accidental slip or omission. The point at issue always relates to a defect in the drafting of the judgement and never to its substance, i.e., to possible unawareness on the part of the Tribunal of facts or applicable rules.' (Judgement No. 896, *Baccouche* (1998).)

… In addition, pursuant to an advisory opinion, dated 13 July 1954, of the International Court of Justice and its own jurisprudence, the Tribunal will consider applications for interpretation of Judgement, where there is dispute as to the meaning or scope of the Judgement. (See Judgement No. 61, *Crawford et al* (1955).)

… The Tribunal has consistently held Applicants to these 'rigorous conditions' which must be met in order to request a revision of judgement. (See *Coulibaly*, *ibid*.) Further, 'neither an application for revision nor an application for correction of a clerical mistake may be confused with a procedure for appeal against the Tribunal's judgements, which are final and not subject to appeal'. (See *Baccouche*, *ibid*.)

Attempting to re-argue issues already decided by judgement, thus constituting *res judicata*, is improper and considered an abuse of the Tribunal's procedures. (See Judgement No. 497, *Silveira* (1990).)" (See also Judgement No. 1166, *Wu* (2004).)

III. In his Application, the Applicant makes no claim that any clerical mistakes were made in the Tribunal's original Judgement. Nor does he allege any newly discovered facts that might have affected the Tribunal's original Judgement or request the Tribunal to interpret its original Judgement. Instead, the Applicant seeks another bite at the proverbial litigation apple by requesting the Tribunal to re-review his case in the hopes that this time the Tribunal might issue an order he likes. Since the Applicant's Application fails to satisfy the limited scope of article 12, his Application for revision is rejected.

The Tribunal now turns its attention to the unfounded and unwarranted allegations of racism and discrimination made against the Tribunal and its secretariat by the Applicant in his present Application. The Tribunal finds the Applicant's tirades to be clear evidence of his abuse of the process of administration of justice, and the Tribunal will not tolerate such abuse:

> "As it has no power to fine the Applicant, or otherwise hold him in contempt, [the Tribunal] wishes to state for the record that it can and will impose costs against the Applicant should further frivolous or abusive Applications be filed

with the Tribunal. This does not contradict the position taken by the Tribunal in its Statement of Policy on costs, adopted on 18 December 1950 (A/CN.5/R.2), which makes no reference to awarding costs against an Applicant."

Judgement No. 1200, *Fayache* (2004), taking judicial notice of Judgement No. 1884, *in re* Vollering (No. 15) (1999), rendered by the Administrative Tribunal of the International Labor Organization, which states:

"The Tribunal has never heretofore imposed a costs penalty upon a complainant. However, it asserts unequivocally that it possesses the inherent power to do so as part of the necessary power to control its own process. Clearly, such power must be exercised with the greatest care and only in the most exceptional situations since it is essential that the Tribunal should be open and accessible to international civil servants without the dissuasive and chilling effect of possible adverse awards of costs. That said, however, there is another side to the coin: frivolous, vexatious and repeated complaints to the Tribunal absorb the latter's resources and impede its ability to deal expeditiously and fully with the many meritorious complaints which come before it. They are also, of course, costly and time-wasting for the defendant organisation."

VI. In view of the foregoing, the Application is rejected in its entirety.

(*Signatures*)

Julio **Barboza**
President

Jacqueline R. **Scott**
Member

Goh Joon Seng
Member

Geneva, 22 July 2005

Maritza **Struyvenberg**
Executive Secretary