United Nations

AT/DEC/1475

Administrative Tribunal

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23 December 2009

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1475

Case No. 1193 Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Dayendra Sena Wijewardane, President; Mr. Goh Joon Seng, Second Vice-President; Ms. Jacqueline R. Scott,

Whereas, on 28 December 2008, a former staff member of the United Nations filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 2 February 2009, the Applicant after making the necessary corrections, filed an Application containing pleas which read, in part, as follows:

> **"II. PLEAS**
>
> 5. …[the Tribunal] to find that:
>
> ….
>
> (b) The present petition is receivable under Article 14 of its Statute; and
>
> (c) Article 7 does not apply to the present petition as it involves the interpretation of the Administrative Tribunal judgment which is outside the purview of joint appeals bodies.
>
> 6. …[t]he Tribunal to find that:
>
> (a) The findings and decisions reached in Judgement No. 1133 … (2003), ipso facto made effective all the rules contained in Appendix D relevant to [the Applicant's] case and consequently entitle [the Applicant] to all the benefits to be derived thereof.

> (b) [The Applicant requests the Tribunal] to order the payment of all unpaid benefits due [to] him under Appendix D of the Staff Rules."

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 6 July 2009, and once thereafter until 6 August;

Whereas the Respondent filed his Answer on 28 July 2009;

Whereas the Applicant filed Written Observations on 21 August 2009;

Whereas the facts in the present case were set forth in Judgement No. 1133 (2003).

Whereas the Applicant's principal contentions are:

1. His request is receivable as the scope of Judgement No. 1133 is at issue.

2. Judgement No. 1133 has not been fully implemented.

3. He has not received payments due relevant to his case under Appendix D of the Staff Rules.

Whereas the Respondent's principal contentions are:

1. The Applicant's request for interpretation of Judgement No. 1133 is without merit as he has not shown that the Judgement was ambiguous or indefinite, and there is a dispute as to the meaning or the scope of the Judgement.

2. The Applicant's request for execution of Judgement No. 1133 is irreceivable and without merit because the Judgement has been fully implemented.

3. The Applicant's new claims seeking additional compensation under Appendix D to the Staff Rules, in particular a disability benefit under Article 11.1 is not receivable as it was not submitted for review by the Advisory Board for Compensation Claims (ABCC) and the Respondent has not agreed to a direct submission of the appeal to the Tribunal.

The Tribunal, having deliberated from 26 October to 25 November 2009, now pronounces the following Judgement:

I. The Applicant joined the Organization as an Associate Auditor in the Internal Audit Division of the Department of Administration and Management on 20 July 1990. He received a permanent appointment in July 1992 and was separated from service on 6 December 2002. His separation was based on a determination by the United Nations Staff Pension Committee (UNSPC) in November 2002 that he was incapacitated for further service and consequently entitled to a disability benefit under article 33 of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF). Whatever the exact grounds for that determination are, it is a fact that a decade earlier, on 21 February 1991, the Applicant had the misfortune, whilst on a mission in Belize, to be involved in a car accident. In this accident he sustained

injuries, which soon after the accident, were described by the doctor who examined him as "... multiple contusions, [e]specially to the right shoulder, upper back, rib case and neck".

II. The Applicant then made a claim to have his injuries adjudicated as having been service-incurred, and the ABCC, on 3 June 1991, recommended that the Applicant's injuries "be considered as attributable to the performance of [his] official duties on behalf of the United Nations". On the following day, the Secretary-General adopted the recommendation of the ABCC.

III. In the decade following the 1991 accident, the Applicant suffered from pain in his back and continued to receive treatment for his "lower back". He was for extended periods on sick leave due to the continuous worsening of the back condition. These difficulties were categorized at times as attributable to his service-incurred injury and also possibly due to other conditions from which the Applicant may have concurrently suffered. Clearly, the Applicant was suffering from back problems and his absence on sick leave and the leave entitlements connected thereto became a matter of contention and resulted in a dispute which eventually led to a judgement of this Tribunal on 25 July 2003 – Judgement No. 1133 (2003).

IV. The Tribunal's finding and decision in that judgement have been accurately summarized in paragraphs 9 and 10 of the Respondent's Answer to this Application as follows:

> "In short the Tribunal found that 'the Respondent's decision to deny special sick leave credits to the Applicant for the requested period was not supported by the evidence, and that the Applicant should have received special sick leave credits for the period 11 January 1999 to May 2000' ... The Tribunal also found that 'the Respondent failed to follow his own procedures and, therefore, denied the Applicant's rights of due process when he improperly placed the Applicant on [special leave without pay], in violation of paragraph 8.2 of ST/AI/ 1999/12' ... In view of that finding, the Tribunal also found that 'the use of the Applicant's annual leave to make up the shortfall arising from his being placed on sick leave with half pay, was improper' and that therefore, 'the Applicant should be credited with sick leave with 62.5 days of annual leave' ... The Tribunal also found that '[the Medical Service Division]'s conclusion that the period from 22 July to 18 December 2000 cannot be considered as certified sick leave' was erroneous…."

V. In view of the foregoing, the Tribunal ordered: (i) the Respondent to credit the Applicant with sick leave credits for the period 11 January 1999 to 4 May 2000 (order no. 1); (ii) the Respondent to "pay the Applicant his full pay and entitlements for the period 22 July to 18 December 2000" (order no. 2); (iii) that "the Applicant be credited with 62.5 days of annual leave" (order no. 3); and, (iv) the Respondent "to pay to the Applicant $15,000 as compensation for the violations of his due process rights and for the abuse of discretion of the Respondent" (order no. 4). (See Judgement No. 1133, para. X). Judgement No. 1133 dealt with claims relating to the Respondent's denial of the Applicant's sick leave credits, his annual leave, and pay entitlements, for the specific periods in question.

VI. The Respondent confirms that the orders made by the Tribunal in Judgement No. 1133 as set out above have been fully implemented and this is not contested by the Applicant. The Applicant himself describes the current Application which the Tribunal is now asked to consider as a "petition for the Respondent's compliance in toto with Staff Rules Appendix D" and he requests the Tribunal to find that "(a) The findings and decisions reached in Judgement No. 1133, … (2003) ipso facto made effective all the rules contained in Appendix D relevant to his case and consequently entitles him to all the benefits to be derived thereof. [and] (b) [Whereafter] the Applicant most respectfully requests the Tribunal to order the payment of all unpaid benefits due to him under Appendix D of the Staff Rules". In other words, he requests that this Tribunal declare that he should be paid all benefits due to him under Appendix D. The Tribunal considers this as a veiled attempt on the part of the Applicant for a revision of judgement in his case. As provided for in article 12 of the Statute of the Tribunal:

> "The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of 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 ...".

The Tribunal has also found in Judgement No. 1120, *Kamoun* (2003) that:

> "In accordance with [article 12 of the Tribunal's] Statute and case law, in order to be able to apply for revision of a judgement it is necessary to satisfy certain formal and substantive conditions … As regards substantive conditions, in order for an application to be admissible the Applicant must on the one hand, plead discovery of a new fact, that is to say one that was not known at the time the judgement was given, and, on the other, the new fact must be of such a nature as to be able to influence the outcome of the dispute as reflected in the judgement." (para. V).

The Tribunal finds that the present Application does not meet the standard requirements for revision of a judgement and rejects the Application, if indeed it is an attempt to ask for a revision.

VII. The Respondent has characterized the Application as a request for interpretation and execution of Judgement No. 1133. The Tribunal accepts this characterization of the present Application and will deal with it on that basis. The Tribunal considers that the Applicant is actually attempting to enlarge the scope of Judgement No. 1133 to claim, as he himself states, all benefits derived from Appendix D of the Staff Rules. The Applicant may wish to claim additional benefits which are, however, altogether outside the scope of the Tribunal's decree in Judgement No. 1133. It is not for the Tribunal to judge in this Application what benefits the Applicant may be entitled to under Appendix D. The Applicant may be entitled to other benefits under Appendix D or he may not. But, these are matters that he cannot canvass by reference to the orders of the Tribunal in Judgement No. 1133. That is a different case to the one he initially submitted and which was deliberated on in Judgement No. 1133. If the Applicant considers that he is entitled to some other or additional benefits or rights, he may of course assert his claims in terms of the Regulations, Rules, and procedures available to him and within such time-limits that may be applicable to

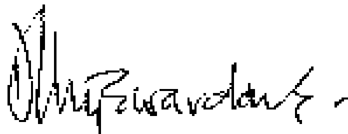
the pursuit of such a claim, quite independently of the specific matters dealt with and adjudicated in Judgement No. 1133, which are *res judicata*.

VIII. To the extent that this Application is a request for an interpretation of Judgement No. 1133, the Tribunal recalls Judgement No. 1377 (2008), where the Tribunal reiterated the principle that whilst it has the jurisdiction to entertain such an Application it must be made "solely to obtain clarification of the meaning and scope of what the Court has decided ….and not to find answer[s] to questions not so decided". There has, therefore, to be "a dispute as to the meaning or scope of the judgement", and there is none here.

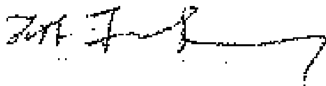
IX. The Tribunal finds that the meaning of the Tribunal's orders in Judgement No. 1133 is clear and unambiguous, and that there is no outstanding issue or dispute concerning the meaning of the Tribunal's orders as explained above.

X. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(*Signatures*)



Dayendra Sena **Wijewardane**
President



Goh Joon Seng
Second Vice-President

Jacqueline R. **Scott**
Member

New York, 25 November 2009

Tamara **Shockley**
Executive Secretary