



**Administrative Tribunal**

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**ADMINISTRATIVE TRIBUNAL**

**Judgement No. 421**

Cases No. 423: CHATWANI  
No. 424: PETTINICCHI

Against: The United Nations Relief  
and Works Agency for  
Palestine Refugees in the  
Near East

No. 426: DU GUERNY  
No. 427: VETERE

Against: The Secretary-General  
of the United Nations

**THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,**

Composed of Mr. Samar Sen, President; Mr. Roger Pinto, First Vice-President; Mr. Arnold Kean, Second Vice-President; Mr. Jerome Ackerman, alternate member designated by the President in the interest of the proper administration of justice, in accordance with article 6, paragraph 1, of the Rules of the Administrative Tribunal;

Whereas, on 11 March 1987, Vidyadhar P. Chatwani and Michael Louis Pettinicchi, staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed two separate applications,

the pleas of which read as follows:

"MAY IT PLEASE the presiding member to agree to oral proceedings in this case.

MAY IT PLEASE the Tribunal:

1. To declare itself competent in this case;
2. To declare and adjudge the application receivable;

3. To order the rescission of a decision of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), namely, in the light of the decision of the Secretary-General of the United Nations to defer at Geneva and Vienna the introduction of the remuneration correction factor (RCF) which was to have come into effect on 1 September 1986 at the six headquarters locations other than New York, in European countries with fully convertible currencies and in Japan, to calculate the Applicant's post adjustment allowance for Vienna, with effect from 1 September 1986, on the basis of the multiplier uncorrected by the RCF (multiplier 57 for the month of September 1986), instead of the multiplier corrected by the RCF (multiplier 59.6 for the month of September 1986);

4. Accordingly, to order payment to the Applicant, with effect from 1 September 1986, of an amount representing the difference between the two amounts of post adjustment, the first calculated on the basis of the multiplier corrected by the RCF and the second on the basis of the multiplier uncorrected by the RCF;

5. To determine that the compensation to be awarded under article 7.3 (d) of the Rules of the Tribunal shall be an amount equal to the difference referred to in paragraph 4 above for the entire period between 1 September 1986 and the date on which the situation was rectified, namely 31 December 1986;

6. To award the Applicant, as costs, a sum payable by the Respondent, assessed at the time of this application at fifty thousand (50,000) French francs, subject to adjustment upon completion of the proceedings."

Whereas, on 18 March 1987, Jacques Du Guerny and Eduardo Vetere, staff members of the United Nations, filed two separate applications, the pleas of which read:

"MAY IT PLEASE the presiding member to agree to oral proceedings in this case.

MAY IT PLEASE the Tribunal:

1. To declare itself competent in this case;
2. To declare and adjudge the application receivable;
3. To order the rescission of a decision of the Secretary-General, namely, pursuant to his decision to defer at Geneva and Vienna the introduction of the remuneration correction factor (RCF) which was to have come into effect on 1 September 1986 at the six headquarters locations other than New York, in European countries with fully convertible currencies and in Japan, to calculate the Applicant's post adjustment allowance for Vienna, with effect from 1 September 1986, on the basis of the multiplier uncorrected by the RCF (multiplier 57 for the month of September 1986), instead of the multiplier corrected by the RCF (multiplier 59.6 for the month of September 1986);

4. Accordingly, to order payment to the Applicant, with effect from 1 September 1986, of an amount representing the difference between the two amounts of post adjustment, the first calculated on the basis of the multiplier corrected by the RCF and the second on the basis of the multiplier uncorrected by the RCF;

5. To determine that the compensation to be awarded under article 7.3 (d) of the Rules of the Tribunal shall be an amount equal to the difference referred to in paragraph 4 above for the entire period between 1 September 1986 and the date on which the situation was rectified, namely 31 December 1986;

6. To award the Applicant, as costs, a sum payable by the Respondent, assessed at the time of this application at fifty thousand (50,000) French francs, subject to adjustment upon completion of the proceedings."

Whereas the Respondent filed his answer on 23 October 1987;

Whereas all the Applicants filed written observations on 18 March 1988;

Whereas, on 2 May 1988, the Respondent filed additional documents;

Whereas the Tribunal held oral proceedings for the four cases at a public session on 3 May 1988;

Whereas, on 4 May 1988, the Respondent filed an additional document;

Whereas the facts in the four cases are as follows:

The Applicant Vidyadhar P. Chatwani, Chief, Audit Division, Finance Department, is the holder of a permanent appointment at the P-5 level, step VII. The Applicant Michael Pettinicchi, Deputy Chief, Data Processing Division, Finance Department, is also the holder of a permanent appointment at the P-4 level, step VIII. The Applicants are currently posted at UNRWA headquarters, in Vienna.

The Applicant Jacques Du Guerny, Population Affairs Officer at the Centre for Social Development and Humanitarian Affairs, is the holder of a permanent appointment at the P-5 level. The Applicant Eduardo Vetere, Acting Chief, Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs, is also the holder of a permanent appointment at the P-5 level. The Applicants are posted at the United Nations Office at Vienna.

Staff members of the United Nations and the specialized institutions linked to the United Nations in the Professional category and above are remunerated on the basis of a single, uniform base salary scale expressed in United States dollars. Their remuneration includes an upward or downward adjustment, whose purpose is to ensure that, whatever their duty station, the remuneration of staff members at the

same level and step is of an equal real value, that is to say, has the same purchasing power in terms of United States dollars. The post adjustment is therefore a permanent component of the remuneration.

The International Civil Service Commission (ICSC) establishes the classification of duty stations for the purpose of applying post adjustments, under article 11 (c) of its statute. The Advisory Committee on Post Adjustment Questions (ACPAQ), a technical subsidiary body of ICSC made up of statisticians, normally reports to ICSC once a year on the functioning of the system.

Post adjustment classification is determined by a post adjustment index and is expressed in classes or multipliers. The post adjustment index is a measurement of the cost of living for international staff members in the Professional and higher categories at all duty stations in comparison with the cost of living in New York, on a particular date. New York is thus the basis of the system. A higher (or lower) post adjustment class corresponds to an increase (or a decrease) of 5 per cent in the cost of living in United States dollars in comparison with the preceding class. Thus, class 1 corresponds to index 105, class 2 to index 110, class 3 to index 116, etc.

The difference between the index number corresponding to a given class or fraction of a class and index 100 (class 0) constitutes the post adjustment "multiplier". Thus, class 0 has multiplier 0, class 1 has 5, class 2 has 10, class 3 has 16, etc.

The amount of the post adjustment applicable to each staff member in the Professional and higher categories, in United States dollars, is the product of the multiplier for the duty station times the amount per index point indicated in the schedule of post adjustments, which varies according to the level and step of the staff member under consideration.

Since international staff members' salaries and allowances are calculated in United States dollars that are paid to them - depending on the duty station, either wholly or partly - in local currency at the official exchange rate set by the United Nations for the month in question, currency fluctuations are necessarily taken into account in the implementation of the system. For example, if, owing to a change in the exchange rates, one United States dollar equals a higher number of local currency units than in the preceding month, purchases made at the duty station cost staff members proportionately less in United States dollars.

Conversely, if the local currency appreciates in relation to the United States dollar, the cost of purchases made at the duty station increases in United States dollars. Such changes are reflected in staff members' monthly remuneration.

At its twenty-fourth session, held in July 1986, ICSC noted that, since exchange rate fluctuations directly affected take-home pay, it was necessary to find a solution that would "minimize to the extent possible any future gains or losses to staff". In 1982 ICSC had decided that a remuneration correction factor (RCF) should be introduced for that purpose. In 1986 it decided on the new procedure for implementing the RCF. The Commission decided that the procedure "should be applied on an interim basis with effect from 1 September 1986 ... The Commission further decided that the procedure should be used at the six headquarters locations other than New York, as well as in European countries with fully convertible currencies and in Japan, as these were all countries where exchange rates had been subject to both upward and downward movements" (A/41/30, para. 126).

On 12 August 1986, the United Nations Under-Secretary-General for Administration and Management, Mr. Patricio Ruedas, requested the Chairman of ICSC to modify the ICSC decision concerning the date for the application of the RCF and to authorize each organization to set the date for applying the RCF at 1 September 1986 at the earliest and 1 January 1987 at the latest. Accordingly, in accordance with rule 32 of the ICSC rules of procedure, the Chairman of ICSC submitted to all the members of ICSC a proposed amendment to decision "ICSC/24/CRP.17/Add.7, paragraph 12", which read:

"The Commission decided that the above procedure should be applied on an interim basis as soon as feasible by each organization starting from 1 September 1986 and in any event not later than 1 January 1987".

Despite an extension of the deadline for sending in votes, the draft did not receive the number of votes required for its adoption. The Chairman of ICSC therefore informed the United Nations Secretary-General, in a letter dated 28 August 1986, that the Commission's earlier decision was still valid.

On 3 September 1986, the UNRWA Controller announced to the staff, in finance circular No. 10/86, that, as a result of the ICSC decision to introduce the RCF, the amount of the post adjustment payable in September in Vienna should be calculated on the basis of multiplier 59.6 (instead of multiplier 57). Then

circular No. 10/86 of 3 September 1986 was superseded by finance circular No. 11/86, which was issued for circulation to the staff on 15 September 1986 by the Officer-in-Charge, UNRWA Finance Department. The circular reads:

"Following a decision by the Secretary-General of the United Nations to defer the implementation of the remuneration correction factor, the recent change in the post adjustment multiplier for Vienna is now adjusted from 59.6 to 57."

In fact, in a telegram dated 9 September 1986 the United Nations Under-Secretary-General for Administration and Management informed the executive heads of the other organizations in the common system that, in view of the current financial situation of the United Nations, the Secretary-General had no choice but to defer, in Geneva and Vienna, the implementation of the measures adopted by the Commission. He added that it was the Secretary-General's intention to rescind those measures as soon as practicable.

In his report dated 16 October 1986 submitted to the Fifth Committee in accordance with rule 153 of the rules of procedure of the General Assembly (A/C.5/41/22), the United Nations Secretary-General indicated that "in view of the current financial crisis and consistent with other economy measures taken, it is intended to apply the RCF arrangements ... at Geneva and Vienna only from 1 January 1987".

In its report of 4 November 1986 (A/41/7/Add.2) to the Fifth Committee on the administrative and financial implications of the decisions and recommendations of ICSC, the Advisory Committee on Administrative and Budgetary Questions took note of the decision taken by the Secretary-General to apply the RCF at the United Nations Offices at Geneva and Vienna only from 1 January 1987 "because of the current financial crisis".

In a letter dated 19 November 1986, the Applicant Pettinicchi requested the Commissioner-General to review the administrative decision to calculate his post adjustment on the basis of multiplier 57, instead of multiplier 59.6, in September 1986. The Applicant requested the Commissioner-General, in the event that he should decide to maintain his decision, to authorize him to submit the application directly to the Administrative Tribunal in accordance with article 7, paragraph 1, of its statute. In a letter dated 1 December 1986, the Applicant Chatwani made a similar request. In letters dated 17 December 1986, the

Commissioner-General informed the Applicants that, after reviewing the matter and taking into account that UNRWA international staff costs were a charge on the regular budget of the United Nations, he had decided to maintain his decision, and authorized the Applicants to submit their applications directly to the Tribunal.

In a letter dated 24 November 1986, the Applicants Du Guerny and Vetere requested the Secretary-General to review the administrative decision to calculate their post adjustments on the basis of multiplier 57, instead of multiplier 59.6, in September 1986. The Applicants requested the Secretary-General, in the event that he should decide to maintain his decision, to authorize them to submit their applications directly to the Administrative Tribunal, in accordance with article 7, paragraph 1, of its Statute. On 12 January 1987, the Chief of the Administrative Review Unit informed the Applicants that the Secretary-General authorized them to submit their applications directly to the Tribunal.

Whereas, on 20 March 1987, the Applicants submitted their applications directly to the Tribunal;

Whereas the Applicants' principal contentions are:

1. The decision adopted by the Respondent constitutes a violation of the Applicants' conditions of service.
2. Since the Under-Secretary-General for Administration and Management had asked the Chairman of ICSC whether the United Nations could apply the RCF flexibly, the Chairman, after having received the votes of ICSC members, informed the United Nations that ICSC had decided to maintain its position and that all the organizations in the common system should introduce the RCF with effect from 1 September 1986. Both the Commissioner-General of UNRWA and the United Nations Secretary-General therefore had an obligation to apply the RCF with effect from 1 September 1986.
3. The decision of the United Nations Secretary-General disregarded the principle of equality, which means that those in like case should be treated alike, and that those who are not in like case should not be treated alike.

Whereas the Respondent's principal contentions are:

1. The Secretary-General has the power under the Charter to deal with a financial crisis. In order to overcome this crisis, the Secretary-General, as part

of a comprehensive cost-cutting package, deferred implementation of the RCF increases for United Nations staff in Vienna and Geneva. This measure was a valid exercise of the Secretary-General's powers.

2. The measures adopted by the Secretary-General were implicitly approved by the General Assembly.

3. The salaries of UNRWA international Professional staff are subject to the post adjustment system and are financed from the United Nations regular budget. Accordingly, the decision of the Commissioner-General to implement for those UNRWA staff the measures adopted by the Secretary-General in respect of United Nations Professional staff is a valid exercise of his powers as chief executive officer of UNRWA.

4. The fact that ICSC considered that the introduction of the RCF was an exercise of its decision-making powers does not affect the validity of the decisions to defer implementation of the RCF from 1 September 1986 to 1 January 1987 on account of the financial crisis of the United Nations.

5. UNRWA's promulgation of an RCF-corrected multiplier for its staff on 3 September 1986 did not prevent suspension of that multiplier from 15 September 1986 to 1 January 1987 for UNRWA staff.

The Tribunal, having deliberated from 2 May 1988 to 27 May 1988, now pronounces the following judgement:

I. The Applicants Chatwani and Pettinicchi, staff members of UNRWA at Vienna, filed in respect of the same measures two separate applications with identical pleas. The Tribunal decides to join these two cases.

II. Furthermore, the Applicants Du Guerny and Vetere, staff members of the United Nations at Vienna, filed in respect of the same measures two separate applications with identical pleas. The Tribunal decides to join these two cases.

III. The issues raised by the four applications referred to above are the same. They concern the same measures and set forth the same pleas. Accordingly, the Tribunal decides to join all these cases.

IV. The parties are in agreement that decision "ICSC/24/CRP.17/Add.7, paragraph 12" was adopted by the International Civil Service Commission (ICSC) in accordance with article 11 of its statute, which reads:



"The Commission shall establish:

...

(c) The classification of duty stations for the purpose of applying post adjustments."

- V. The United Nations Secretary-General acknowledges that the Commission's authority to establish the classification of duty stations for the purpose of applying post adjustments covers the determination of a post adjustment index and post adjustment classes or multipliers, as well as the establishment of a remuneration correction factor (RCF) and of a procedure for calculating the RCF. In the present case, the ICSC decision concerns this latter point - the RCF. The decision's validity is not contested by the Respondent.
- VI. The Respondent does not contest the fact that the measure in question is of a mandatory nature and that it must be adopted by all the organizations that form part of the United Nations common system of salaries, allowances and other benefits payable to international staff members. The Tribunal believes that observance of the rules duly adopted by ICSC is of the utmost importance.
- VII. The Respondent recognizes that the decision referred to above was adopted by ICSC in accordance with the proper procedure. He does not invoke any fundamental flaw that would make the decision in question void.
- VIII. On 12 August 1986 the United Nations Secretary-General requested ICSC to modify the ICSC decision concerning the remuneration correction factor. He asked ICSC to make provision for a certain amount of flexibility in implementing, in the context of the post adjustment system, the arrangements for the application, by the various organizations in the common system, of the RCF, which ICSC had decided, at its recently held twenty-fourth session, to introduce with effect from 1 September 1986. Through that communication the Respondent acknowledged that ICSC has the authority to modify its own decisions. The Tribunal believes that it is not for the United Nations Secretary-General or for the Secretaries-General or Directors-General of the other organizations in the common system to revise, modify or rescind a decision adopted by ICSC in accordance with its statute.

IX. The Tribunal notes that the Secretary-General's decision to defer implementation of the ICSC decision is tainted with illegality since it was adopted by an authority not competent.

X. Accordingly, the decisions to do so by the Commissioner-General of UNRWA and the United Nations Secretary-General, refusing to apply with effect from 1 September 1986 in respect of the Applicants Chatwani, Pettinicchi, Du Guerny and Vetere the ICSC decision concerning the RCF, must be rescinded.

XI. The Respondent invoked the financial crisis of the United Nations to justify the suspension of the ICSC decision by the Secretary-General. In the Tribunal's view, the Secretary-General does not have the authority either to modify or to suspend ICSC decisions, whatever the reasons for his action.

XII. It is not for the Tribunal to substitute for the erroneous decision by the Secretary-General another decision he could have adopted in the exercise of the power conferred on him by virtue of which authorizes him to take the initiative in adopting measures to guarantee the Organization's survival in the event of a serious financial crisis: for example, by calling on staff members to make financial sacrifices or by obtaining appropriate guidance from the General Assembly. It is therefore not necessary for the Tribunal to pronounce on the existence and scope of that power.

XIII. The Respondent contended that the decision to defer implementation of the RCF was "implicitly approved" by the General Assembly. He does not provide sufficient proof of such approval. It is therefore not necessary for the Tribunal to consider what the implications and legal effects of such approval would have been.

XIV. The Applicants request the Tribunal to award to each of them, as costs, an amount of FF 50,000. They do not provide proof of having paid costs exceeding normal expenditure in cases before the Tribunal. There are therefore no grounds for awarding them reimbursement of costs.

XV. For these reasons the Tribunal:

(1) Decides to rescind the measures adopted by the Commissioner-General of UNRWA in respect of the Applicants Chatwani and Pettinicchi, which deferred the application of the corrected RCF to the calculation of their post adjustment from 1 September 1986 to 1 January 1987;

(2) Decides to rescind the measures adopted by the United Nations Secretary-General in respect of the Applicants Du Guerny and Vetere, which deferred the application of the corrected RCF to the calculation of their post adjustment from 1 September 1986 to 1 January 1987;

(3) Orders payment to the Applicants, with effect from 1 September 1986 to 31 December 1986, of an amount representing the difference between the two amounts of post adjustment, the first calculated on the basis of the multiplier corrected by the RCF established pursuant to the decision adopted by ICSC and the second on the basis of the multiplier uncorrected by the RCF;

(4) Rejects all the Applicants' other pleas.

(Signatures)

Samar SEN  
President

Roger PINTO  
First Vice-President

Arnold KEAN  
Second Vice-President

Geneva, 27 May 1988

R. Maria VICIEN-MILBURN  
Executive Secretary