

## Judgement No. 88

*(Original : English)*

**Case No. 88 :**  
**Davidson**

*Against :* **The Secretary-General  
of the United Nations**

*Request for rescission of decisions denying the Applicant reimbursement of payments to the United States Government for Social Security Self-employment Tax on his United Nations salary.*

*General Assembly resolutions 13 (I) and 973 (X).—Staff Regulation 3.3.—Judgement must be based on the language of these provisions and particularly on the progressive changes made by the General Assembly in them.—Principle of interpretation that, in the absence of specific provisions to the contrary, the words should be given their normal meaning.—Respective characteristics of the Social Security Tax and of income tax.—Held that the Social Security Self-employment Tax is not covered by the term “national income taxes” under the aforesaid provisions.*

*Argument regarding the principle relating to granting of relief from double taxation.—No double taxation, as they are different taxes.*

*Argument regarding the principle of equality among staff members.—Argument insufficient in view of the fact that the resolutions and regulations in force must be applied.*

*Application rejected.*

## THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; the Honourable Mr. R. Venkataraman ; Mr. James W. Barco, alternate member ;

Whereas Lawrence Davidson, a staff member of the United Nations, filed an application with the Tribunal on 2 April 1963 and amended the pleas thereof on 1 July 1963 ;

Whereas the application as amended requests the Tribunal :

(a) To rescind the administrative decision dated 27 November 1962 by which the Controller of the United Nations refused to reimburse the sum paid by the Applicant to the United States Government as Social Security Self-Employment Tax on the United Nations salary and emoluments he had received in 1961 and confirmed an earlier decision by the Deputy Controller not to reimburse the sum paid by the Applicant as Social Security Self-Employment Tax on the United Nations salary and emoluments he had received in 1960 ;

(b) To order the reimbursement to the Applicant of the sum of \$657.60, representing the local amount of Social Security Self-Employment Tax paid by the Applicant on the United Nations salary and emoluments he had received in 1960, 1961 and 1962 ;

(c) To order that, as long as United Nations Regulations or General Assembly resolutions provide for the reimbursement of national income taxes, the Applicant be reimbursed for any Social Security Tax ;

Whereas the Respondent delivered his answer on 11 June 1963 ;

Whereas the Applicant filed written observations on the Respondent's answer on 30 July 1963 ;

Whereas, on 19 August 1963, the President requested the parties to supply in writing additional information ;

Whereas the additional information requested was supplied by the Respondent on 6 September 1963 and by the Applicant on 9 September 1963 ;

Whereas, on 10 September 1963, the Respondent corrected in writing a statement appearing in the answer delivered on 11 June 1963 ;

Whereas, on 13 September 1963, the Respondent filed additional written material ;

Whereas, on 17 September 1963, the Tribunal put a question to the parties ;

Whereas, on 18 September 1963, the Tribunal held a public session in the course of which the parties submitted additional arguments and answers to the question referred to above and to other questions put to them during the session by the President and members of the Tribunal ;

Whereas the facts in the case are as follows :

The Applicant is a clerk G-5 in the United Nations Postal Administration. He joined the Secretariat in 1946 and received a permanent appointment in 1949. He is a United States national. Since the United States is not a party to the Convention on the Privileges and Immunities of the United Nations, the Applicant enjoys no immunity from United States fiscal legislation and has paid all the income taxes levied on his United Nations salary and emoluments by Federal and State authorities. As in the case of other staff members subject to national income taxation, these taxes have been reimbursed to him by the Organization. At the beginning of the Applicant's employment, the reimbursement of national income taxes was provided for in a specific clause of his letter of appointment. In 1948, however, the Applicant (in common with other staff members) agreed to the deletion of the clause, and since that time the reimbursement has been made exclusively in pursuance of the rules laid down by the General Assembly in several resolutions and subsequently embodied in Staff Regulation 3.3, entitled " Staff Assessment Plan ". This Regulation provides that the salaries and emoluments of Staff members are subject to an assessment deducted by the Organization from payments at a rate increasing with the amount of the salary and emoluments of the staff member concerned. As regard national income taxation, paragraph (f) of the Regulation specifies, *inter alia*, that :

" (f) Where a staff member is subject both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments paid to him by the United Nations, the Secretary-General is authorized to refund to him the amount of staff assessment collected from him provided that :

" (i) The amount of such refund shall in no case exceed the amount of his income taxes paid and payable in respect of his United Nations income ;

" (ii) If the amount of such income taxes exceeds the amount of staff assessment, the Secretary-General may also pay to the staff member the amount of such excess ; "

Staff Regulation 3.3 and the previous General Assembly resolutions on the matter make no reference to Social Security tax. As regards this Tax, neither the Organization nor its staff was, before 1960, subject to Social Security Tax with respect to United Nations salary and emoluments. In 1960, however, the United

States Congress adopted several amendments to the Federal Old-Age, Survivors, and Disability Insurance System which brought under the System all United States nationals employed by international organizations and, in particular, by the United Nations. These amendments did not affect the organizations as such, since the staff members concerned were considered as "self-employed individuals" and were required to pay the total amount of the tax levied on their salaries and emoluments without any corresponding payments by the organizations employing them. Since the adoption of these amendments, the Applicant had paid a total amount of \$657.60 as Social Security Self-Employment Tax on his United Nations salary and emoluments for 1960, 1961 and 1962. On 18 April 1961, the Applicant requested the Controller to order the reimbursement of the amount of the tax paid for 1960. On 22 November 1961, he was informed that his request could not be granted. On 14 November 1962, he requested the Controller to order the reimbursement of the amount paid for 1961, as well as of the amount previously claimed. His request was denied on 27 November 1962. On 12 December 1962, the Applicant asked the Secretary-General in writing to review "the administrative decision communicated to me by [the] Controller, on 27 November 1962, rejecting my request of 14 November 1962 for reimbursement of Social Security tax for the years 1960 and 1961". He added that "should... an appeal be necessary, I hereby request your agreement to submitting it directly to the Administrative Tribunal of the United Nations, in keeping with article 7.1 of its Statute". On 3 January 1963, the Secretary-General rejected the Applicant's request for a review of the administrative decision in question and expressed his agreement to the submission of the matter directly to the Administrative Tribunal. On 2 April 1963, the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are :

1. United States courts have consistently held that the Social Security Tax is income tax even when imposed on self-employed individuals without contributions from the employer.

2. Headquarters Regulation No. 1, issued by the Secretary-General on 26 February 1951, makes it clear that Federal social security legislation is not applicable to the United Nations in view of the privileges and immunities granted to the Organization by an act of Congress. Furthermore, Section 21 of the Headquarters Agreement provides machinery for the settlement of any dispute between the United States and the United Nations as to whether a Federal law is inconsistent with any regulation issued by the United Nations under the privileges and immunities granted to it. The fact that the Secretary-General did not make use of this machinery with respect to the Social Security Self-employment Tax on United States nationals employed by the United Nations clearly shows that he himself considered that the Tax fell within the category of income tax and did not, therefore, infringe the immunity of the Organization from social security legislation.

3. Since the Social Security Self-employment Tax on United States nationals employed by the United Nations falls within the category of income tax, its reimbursement by the Organization is mandatory under the terms of Staff Regulation 3.3.

4. The refusal by the Secretary-General to reimburse the tax is contrary to the principles of equality among staff members and protection against double taxation

—two of the fundamental principles underlying the system adopted by the General Assembly with respect to national taxation of staff members. It is contrary to the first principle since the tax affects only part of the staff. It is contrary to the second principle since the staff assessment imposed by the Organization on all staff members is in fact an income tax levied at rates which are higher than those of United States income taxes.

5. Although the Social Security Self-employment Tax is compulsory, the amount of benefits, if any, which the Applicant might derive from it at some time in the future is unknown. Such benefits would depend on the continuance of existing laws. If paid, they would be comparable to those accruing to staff members of other nationalities under the social security systems of their respective countries, although such staff members are exempt from payments of taxes or contributions under the Convention on the Privileges and Immunities of the United Nations. The reimbursement of the Social Security Self-employment Tax to the Applicant would therefore create no element of inequality among staff members. Moreover, the General Assembly sought to establish fiscal equality among staff members and not equality of social welfare benefits available to staff members in their respective countries after their retirement.

6. As regards the principle of equity among States, the method of apportioning among the Members of the United Nations the charges resulting from the reimbursement of the Social Security Self-employment Tax will have to be determined by the Secretary-General and the General Assembly.

7. The majority of the staff members concerned adopted a negative attitude towards the Social Security Self-employment Tax. Only some senior officials actively supported the enactment of the Tax by the United States Congress. In any case, the attitude of the taxpayers affected is entirely irrelevant to the legal problems at issue.

Whereas the Respondent's principal contentions are :

1. The authority of the Secretary-General under Staff Regulation 3.3 does not automatically entitle the staff members concerned to reimbursement of any tax on income.

2. Although a tax on income, the Social Security Self-employment Tax is distinguishable from the income taxes considered by the General Assembly in the resolutions leading to Staff Regulation 3.3 in so far as its coverage is different from such taxes, it results in credits for the purpose of benefits, it is not imposed for general revenue purposes, and it is viewed by the legislature and courts as remedial and beneficial for the taxpayers on whose income it is measured. Moreover, United States authorities do not regard the Social Security Tax as income tax for the purpose of determining relief from double taxation.

3. Headquarters Regulation No. 1 is not concerned with social security contributions payable by United Nations staff when these contributions are not chargeable to the United Nations. It deals exclusively with the "obligations of the United Nations" and payments which a person may "be entitled to receive from the United Nations". It affords, therefore, no basis for a contention that, by failing to invoke the Headquarters Agreement to protest the Social Security Self-employment Tax, the Administration had taken a position inconsistent with its present treatment of the Tax as a social security measure.

4. Viewed in the light of the principle of equality, the reimbursement by the United Nations of the Social Security Self-employment Tax paid by staff members

of United States nationality would raise the problem of obtaining for other staff members benefits comparable to those derived by United States nationals from the Federal Old-Age, Survivors, and Disability Insurance System.

5. The refund of any tax by the United Nations is chargeable to the Member States levying the tax. The refund of the Social Security Self-employment Tax would therefore result in the payment by the United States of the contributions of some of its nationals to the Federal Old-Age, Survivors, and Disability Insurance System and would, thereby, affect the principle of equity among States.

6. Extension of coverage of the Federal Old-Age, Survivors, and Disability Insurance System was actively sought and supported by the Staff Association and by United States nationals employed by the United Nations. This expression of preference on the part of the taxpayers concerned played an important part in the adoption by the United States Congress of the amendments extending this coverage.

The Tribunal, having deliberated from 17 September to 3 October 1963, now pronounces the following judgement :

I. The Applicant requests that the administrative decisions denying him reimbursement of payments to the United States Government for Social Security Self-employment Tax be rescinded ; that he be reimbursed for the total amount of Social Security Self-employment Tax paid on his United Nations salary for the years 1960, 1961 and 1962 ; and that it be ordered that he be reimbursed for any Social Security Tax he may have to pay on his United Nations salary in the future.

II. His requests are based upon the General Assembly resolutions 13 (I) and 973 (X), and United Nations Staff Regulation 3.3.

Resolution 13 (I), Chapter V, provides that :

“Having regard particularly to the administrative and budgetary arrangements of the Organization, the General Assembly concurs in the conclusion reached by the Administrative and Budgetary Committee that there is no alternative to the proposition that exemption from national taxation for salaries and allowances paid by the Organization is indispensable to the achievement of equity among its Members and equality among its personnel.

*“Therefore the General Assembly resolves that :*

“12. Pending the necessary action being taken by Members to exempt from national taxation salaries and allowances paid out of the budget of the Organization, the Secretary-General is authorized to reimburse staff members who are required to pay taxation on salaries and wages received from the Organization.”

Resolution 973 A (X), paragraph 4, provides that :

“ . . . there shall be charged against the credits of the appropriate Member States under paragraph 2 above all amounts paid under Resolution C below by way of double-taxation relief in respect of national income taxes, excluding any local or state income taxes, levied on staff members by the Member States concerned during each financial year provided that, should the credit under paragraph 2 above be insufficient for this purpose, all such payments made after the credit has been liquidated shall be charged to the credit of the appropriate Member State under paragraph 3 above ;”

Resolution 973 C (X), paragraph 2, provides that :

“Where a staff member is subject both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments

paid to him by the United Nations, the Secretary-General is authorized to refund to him the amount of staff assessment collected from him provided that :

“(a) The amount of such refund shall in no case exceed the amount of his income taxes paid and payable in respect of his United Nations income ;

“(b) If the amount of such income taxes exceeds the amount of staff assessment, the Secretary-General may also pay to the staff member the amount of such excess ;

“(c) Payments made in accordance with the provisions of this article shall be charged to the Tax Equalization Fund.”

Staff Regulation 3.3 (f) provides that :

“Where a staff member is subject both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments paid to him by the United Nations, the Secretary-General is authorized to refund to him the amount of staff assessment collected from him provided that :

“(i) The amount of such refund shall in no case exceed the amount of his income taxes paid and payable in respect of his United Nations income ;

“(ii) If the amount of such income taxes exceeds the amount of staff assessment, the Secretary-General may also pay to the staff member the amount of such excess ;

“(iii) Payments made in accordance with the provisions of the present Regulation shall be charged to the Tax Equalization Fund.

“(iv) A payment under the conditions prescribed in the three preceding subparagraphs is authorized in respect of dependency benefits and post adjustments, which are not subject to staff assessment, but may be subject to national income taxation.”

III. The Applicant contends that the United States Social Security Tax constitutes that kind of national taxation which the General Assembly decided employees of the United Nations should be exempt from paying, or for which they should be reimbursed, any such payment required by a Member State, and that such exemption or reimbursement is, in the words of Resolution 13 (I), Chapter V, “indispensable to the achievement of equity among its Members and equality among its personnel”. The Applicant further contends that the United States Social Security Tax applicable under United States law to employees of the United Nations is specifically an income tax within the normal meaning of the term and that, as such, it was the intent of the General Assembly in Resolution 973 (X) that where an employee has not been exempted from payment, he should be reimbursed.

IV. The Tribunal notes that no difference arises between the Applicant and the Respondent as to the intent of the General Assembly or as to the validity of Staff Regulations concerning income tax *per se* or as to the underlying principles of equity among the Member States and equality among personnel of the United Nations.

V. The Tribunal is asked to determine whether the United States Social Security Tax is that kind of national income tax contemplated by the General Assembly and covered by Staff Regulations for reimbursement. Neither Applicant nor Respondent has cited any direct evidence of the General Assembly’s intent in this regard other than the Resolutions herein referred to. The Applicant has sought to show, through the citation of decisions of United States courts and administrative bodies, that the United States Social Security Tax has been held to be an income

tax. The Respondent has not denied that United States authorities refer to the Social Security Tax as an income tax. The Respondent argues, however, that the authorities cited have used the term "income tax" thus broadly because of the fact that the rate of payment of the tax is in proportion to the income, that it is collected in substantially the same way as income tax *per se*, and that moreover the issue before United States judicial and administrative bodies was related to the constitutional power of the United States Congress to enact the Social Security Tax as an additional tax on income. The Respondent argues in effect that the authorities cited by the Applicant are irrelevant and not material to the issue before the Tribunal, that is, whether the General Assembly contemplated the inclusion of a Social Security Tax, such as that in question, in its provisions regarding income tax. The Respondent argues further that income tax *per se* is a general revenue tax, the benefits of which as regards the taxpayer are indirect, whereas a Social Security Tax is not a general revenue tax but a special tax which confers a direct personal benefit to the taxpayer. The Respondent argues, therefore, that the General Assembly in its use of the term "national income taxation" could not have meant to include within the meaning of that term social security taxes.

VI. The Applicant further contends that compulsory payment by United States nationals who are employees of the United Nations, without reimbursement, is contrary to the fundamental principle of equality among United Nations personnel enunciated by the General Assembly. The Applicant argues in effect that because of the importance attached to this principle by the General Assembly, any tax based on the income of United Nations employees leading to inequality of treatment *a fortiori* comes within the terms of its provisions on reimbursement.

VII. The Tribunal observes that neither at the time of the passing of General Assembly resolution 13 (I) nor at the time of the passing of resolution 973 (X) were United States nationals in the employment of the United Nations liable to pay social security taxes on their income. It was only after the legislation of the United States Congress in 1960 that United States nationals in United Nations employment became liable for such taxation. It is clear, therefore, to the Tribunal that when the said resolutions were passed, the General Assembly had not contemplated reimbursement of this kind of tax.

VIII. In any event, the Tribunal considers that its judgement must be based on the language of the applicable provisions of the resolutions of the General Assembly and the Staff Regulations pursuant thereto, and particularly on the progressive changes made by the General Assembly in the language and provisions of these resolutions. Thus the Tribunal notes that at its first session the General Assembly referred broadly to exemption or reimbursement of "national taxation" on salaries and allowances paid by the Organization. However, the provisions of resolution 973 (X) of the tenth session relating to exemption and reimbursement refer specifically to "national income taxes". Staff Regulation 3.3 reflected these changes.

IX. In interpreting legal texts, the principle that, in the absence of specific provisions to the contrary, the words should be given their normal meaning is generally accepted. Applying the principle, the Tribunal observes that while the Social Security Tax is no doubt an additional levy calculated on the income of the taxpayer, it cannot be said to be *per se* income tax. The characteristics of the Social Security Tax differ widely from those of income tax. The Social Security Tax is imposed and administered for the specific purpose of giving benefits to the

contributors and not for general revenue purposes. The Tribunal finds, therefore, that the Social Security Tax is not income tax as commonly understood or as used in legal texts. Accordingly, the Tribunal holds that the Social Security Self-employment Tax is not covered for the purposes of reimbursement by the term "national income taxes" under the relevant General Assembly resolution and the subsequent Staff Regulation 3.3.

X. The Applicant contends that, by the levy of Social Security Tax on United States nationals, in addition to the staff assessment, the United States nationals employed in the United Nations are subject to double taxation, and that such a levy is contrary to the resolutions adopted by the General Assembly affording protection against double taxation. The principle relating to granting of relief from double taxation has been embodied in resolution 239 C (III) which reads as follows :

*"The General Assembly,*

*"...*

*"Requests Members which have not acceded to the Convention on Privileges and Immunities of the United Nations or which have acceded to it with reservations as to its section 18 (b), take the necessary action, legislative or other, to exempt their nationals employed by the United Nations from national income taxation with respect to their salaries and emoluments paid to them by the United Nations, or in any other manner to grant relief from double taxation to such nationals."*

The Tribunal considers that the Applicant's argument would be valid only if the same kind of tax were levied both by the United Nations Organization and by the United States. For example, if United States nationals were obliged to pay income tax to the United States (without reimbursement) and also the staff assessment, this could amount to double taxation. But the Tribunal is of the view that the Social Security Tax is a different tax from national income tax and therefore that there is no double taxation in the sense in which it is legally understood.

XI. The Applicant contends that the levy of the Social Security Tax on United States nationals in the employment of the United Nations reduces their take-home pay as compared with that of similar staff members nationals of other countries, and that, therefore, the principle of equality among staff members is violated unless the Social Security Tax on United States nationals is reimbursed by the United Nations.

XII. The Tribunal has carefully considered the information furnished by the Applicant regarding the benefits which staff members of various nationalities may obtain from their national social security systems and the comparative payments they may make while employed by the United Nations. The fact that, in the circumstances described by the Applicant, the collection of the Social Security Tax affects the take-home pay of staff members who are United States nationals may have a not inconsiderable psychological effect ; but this, however great it may be, is not enough to change the legal situation brought about by the resolutions and regulations now in force, on which the Tribunal must base its judgement.

XIII. In asking the Tribunal to rule that "an appropriate amount of the staff assessment" be refunded and that "the modalities of such a refund and the manner of apportioning charges among Member States... be worked out by the Secretary-General, the Fifth Committee and the General Assembly" (Applicant's written observations on the Respondent's answer, page 15), the Applicant has himself



implicitly recognized that under the resolutions and the Staff Regulations relating to income tax his pleas cannot be sustained. It is not for the Tribunal to express itself on the merits of the pleas beyond the application of the law as it stands.

XIV. Consequently, the application is rejected.

*(Signatures)*

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

R. VENKATARAMAN  
*Member*

James W. BARCO  
*Alternate Member*

N. TESLENKO  
*Executive Secretary*

New York, 3 October 1963.

## Judgement No. 89

*(Original : French)*

Case No. 84 :  
Young

Against : **The Secretary-General of  
the International Civil  
Aviation Organization**

*Request by a former Technical Assistance official of ICAO for validation by the Joint Staff Pension Fund of service completed before his participation in the Fund.*

*Request for rescission of the decision refusing validation of the Applicant's prior service.—Article III of the Regulations of the Fund.—Circular of 26 February 1958 ruling that in the case of technical assistance experts validation is excluded on the basis of paragraph 4 of this article.—Respondent is not justified in barring in an individual case the application of the interpretation of the relevant provisions he has given in a circular of general scope.—Respondent's change of attitude in thereafter basing the refusal of validation on paragraph 1 of this article.—Obligation of the Tribunal to decide the dispute on the basis of the provision which the Respondent himself considered applicable in the circular addressed to the staff members concerned.—Examination of the Applicant's contractual status to determine whether it excludes the validation of previous service on the basis of the aforesaid paragraph 4.—An explicit exclusion clause relating specifically to participation in the Fund required.—“Omnibus clause” cannot be regarded as equivalent to such an exclusion clause.—Reservation contained in paragraph 4 not applicable to the Applicant.—Contested decision rescinded.*

*Award to the Applicant, in the event that the Secretary-General decides to exercise his option under article 9.1 of the Statute of the Tribunal, of an amount equal to the net financial advantage which the Applicant would have derived, under the Regulations of the Fund, from the validation of his prior service.*