
ADMINISTRATIVE TRIBUNAL

Judgement No. 371

Case No. 328: LEBAGA

Against: The Secretary-General
of the International
Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, First Vice-President, presiding;
Mr. Herbert Reis, Second Vice-President; Mr. Luis M. de Posadas
Montero;

Whereas on 11 April 1984, Joseph Langmia Lebaga, a former
staff member of the International Maritime Organization, hereinafter
referred to as IMO, filed an application against the decision of the
Secretary-General of the IMO to dismiss him for misconduct,
effective 30 April 1983;

Whereas in paragraphs XI and XII of Judgement No. 340,
delivered on 2 November 1984, the Tribunal held that

"the decision of the Respondent to dismiss the Applicant from the
service of IMO was founded upon a report of the Disciplinary
Board which was vitiated for lack of due process and that the
decision of the Respondent therefore cannot stand".

It found

"that the charges against the Applicant have not been proved by
evidence received in accordance with due process of law."

Whereas paragraph XIII of Judgement No. 340 reads as follows:

"XIII. Accordingly, the Tribunal orders the rescinding of the
decision of the Respondent but if the Respondent decides
that, in the interest of the Organization, no further action
shall be taken in the Applicant's case, the Tribunal orders

the Respondent to pay to the Applicant six months' net base salary at the time of his dismissal."

Whereas, on 4 December 1984, the Respondent paid the Applicant the sum of 3,785 pounds representing six months' net base salary at the time of the Applicant's dismissal;

Whereas in a letter dated 21 February 1985, the Head, Personnel Section, informed the Applicant that the Secretary-General additionally had decided, "on humanitarian grounds", to award him a termination indemnity under the terms of annex III(c) to the Staff Regulations, corresponding to "three and a half months' net base salary excluding allowances";

Whereas on 6 September 1985 the Applicant filed an application the pleas of which read as follows:

- "(1) I appeal to the Administrative Tribunal to give an interpretation of their Judgement No. 340 delivered on 2 November 1984 in case No. 328, so that there should be no doubts as to the intention of the Tribunal.
- (2) I appeal to the Administrative Tribunal to request the Secretary-General of IMO to comply with its order to rescind his decision to dismiss me from the service of IMO.
- (3) I appeal to the Administrative Tribunal to determine the date of my separation from service as the date on which the Secretary-General of IMO informed me of his decision on the judgement of the Administrative Tribunal, and to order the Secretary-General to pay my salary up to that date, as is the universal practice.
- (4) I appeal to the Administrative Tribunal to order the Secretary-General of IMO to pay me the additional indemnity due to me, in accordance with IMO staff rules 109.2(a) 2(c) and 3(a).
- (5) I appeal to the Administrative Tribunal to order the Secretary-General of IMO to issue me with a Certificate of Service in accordance with IMO staff rule 109.9.
- (6) I appeal to the Administrative Tribunal to order the Secretary-General of IMO to amend my Personnel Action Form suitably, and furnish me with a copy."

Whereas, in a letter dated 24 September 1985 addressed to the Executive Secretary of the Tribunal, the Chairman of the Staff Committee of the IMO, asked the Tribunal to consider the following questions:

- "1. Why did the Tribunal reject the pleas concerning the merits of the case brought against the Applicant and why did it not state the reasons on which the rejection was based, as it is apparently required to do by article 10, paragraph 3, of the Tribunal's Statute?
2. Why was the compensation ordered by the Tribunal as an alternative to specific performance set at such a low level?"

Whereas the Respondent filed his answer on 7 April 1986;

Whereas the Applicant filed written observations on 30 April 1986;

Whereas in a communication dated 24 June 1986 the Chairman of the Staff Committee of the IMO transmitted certain additional comments;

Whereas the facts of the case have been set forth in Judgement No. 340;

Whereas the Applicant's principal contentions are:

1. Since the Secretary-General decided that it was not in the interest of the IMO to reinstate the Applicant, then the Applicant should be deemed to have been a staff member of the IMO until the date of the Tribunal's judgement.
2. The Applicant is entitled to an additional indemnity of twelve months net salary plus allowances in accordance with staff rule 109.2(a) and (c), and 109.3(e).
3. The IMO has determined the Applicant's guilt notwithstanding the Tribunal's ruling that the charges against the Applicant had not been proved by evidence received in accordance with due process of law.

Whereas the Respondent's principal contentions are:

1. The meaning and scope of Judgement No. 340 are sufficiently clear and do not require any interpretation.
2. The Secretary-General complied fully with the Tribunal's order deciding to pay the Applicant six months' net base salary at the time of his dismissal.
3. The request by the Chairman of the Staff Committee does not seek an interpretation but appears to question the judgement of the Tribunal itself.

The Tribunal, having deliberated from 13 October 1986 to 28 October 1986, now pronounces the following judgement:

I. Insofar as the application in this case comprises a request for revision of a judgement, the Tribunal must refer to article 12 of its Statute. This provision authorizes an Applicant, or the Secretary-General of the organization concerned, to

"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...".

However broadly the Tribunal may wish to apply article 12 in a particular case, this provision of its Statute plainly does not authorize reconsideration of a judgement in the absence of a newly discovered, decisive fact. The application does not contain any such fact.

II. Taking the application as a request for interpretation, the Applicant asserts that he should be considered an IMO staff member until the moment at which the Secretary-General decided to exercise the option opened to him by the Tribunal in its Judgement No. 340 to pay compensation instead of rescinding his previous decision to

dismiss. According to the Applicant's claim, he would thus be entitled to an additional eighteen months salary beyond 30 April 1983, the date of the original decision of the Secretary-General to separate him from the service of the IMO.

The Tribunal has on a number of occasions acceded to a request for the interpretation of a judgement where the party concerned has raised a question as to possible ambiguity or lack of clarity in matters relating to the implementation of the judgement. Cf. Judgement No. 366, Sabatier (1986) and Judgement No. 330, Klee (1984).

III. The Applicant contends that the IMO Secretary-General wrongfully declined to rescind his decision to dismiss the Applicant from IMO service, but the Tribunal observes that Judgement No. 340 did not require the Secretary-General to do so. Nor, under article 9, paragraph 1, of the Statute, could the Tribunal have done so without giving the Secretary-General the alternative of paying compensation. Rather, the Tribunal ordered "the rescinding of the decision" to dismiss or--and the Tribunal emphasizes that its order took an alternative form--if the Secretary-General "decides that, in the interest of the Organization, no further action shall be taken in the Applicant's case, the Tribunal orders the Respondent to pay to the Applicant six months' net base salary at the time of his dismissal." (Paragraph XIII). The pleadings now before the Tribunal show that the Secretary-General decided not to rescind his previous decision; he chose, instead, to compensate the Applicant. This compensation was due because of the flawed procedure earlier followed by an IMO Disciplinary Board in failing to accord the Applicant such due process rights as the right to be represented by counsel and to examine witnesses. The Secretary-General's decision thus falls squarely within the terms of the Tribunal's judgement.

IV. The Tribunal finds the Applicant's contention concerning non-rescission of the decision to dismiss him to be without merit. In

the earlier proceeding before the Tribunal, both he and the Secretary-General based their arguments on the latter's action on 19 April 1983 to separate the Applicant with effect from 30 April 1983. Judgement No. 340 refers explicitly to 30 April 1983 as the date on which the Secretary-General sought to effect the Applicant's separation from IMO; there was no controversy whatever as to this date. In the judgement, the Tribunal carefully avoided treating the Secretary-General's decision to dismiss as void ab initio but held that, in view of lack of due process, that decision could not stand, that is, it was voidable and should be rescinded by the Secretary-General. In accordance with article 9, paragraph 2, of the Statute, if the Secretary-General decided not to take that action, then he was obliged to make a compensatory payment for the fault in procedure; the amount of compensation was fixed by the Tribunal at six months' net base salary at the time of the Applicant's dismissal. As a consequence, the Tribunal confirms that the date of the Applicant's dismissal was 30 April 1983.

V. The pleadings in the current proceeding show--and it is readily admitted by the Applicant--that the Secretary-General paid him compensation amounting to six months' net base salary as of 30 April 1983. The pleadings further reveal--nor is it contested--that on 21 February 1985 the Secretary-General, acting on what he described as humanitarian grounds, paid the Applicant an additional termination indemnity corresponding to three and a half months' net base salary. The Tribunal can find nothing in the Secretary-General's response to Judgement No. 340 that is faulty or in any way inconsistent with it.

VI. Accordingly all of the pleas contained in the application are rejected.

VII. As noted at the outset, the Tribunal has received two communications from the Chairman of the IMO Staff Committee

representing the IMO Staff Association. He had earlier served as, but is no longer, counsel to the Applicant. While the Tribunal is entitled to consider views of authorized representatives of the staff association of the organization concerned, the two communications before it fail to raise any matter concerning the interpretation of Judgement No. 340. On the contrary, they contain questions implying criticism of that judgement. It is the undoubted right of a staff association to make whatever criticism of a judgement it considers appropriate, but the Statute does not give the Tribunal jurisdiction to act as a court of appeal with regard to its own judgements. These, in the words of article 10, paragraph 2, of the Statute, "shall be final and without appeal", subject to exceptions not relevant to this case. Consequently, the Tribunal does not propose to consider the matters raised in these two communications.

(Signatures)

Arnold KEAN
First Vice-President, presiding

Herbert REIS
Second Vice-President

Luis M. de POSADAS MONTERO
Member

New York, 28 October 1986

R. Maria VICIEN-MILBURN
Executive Secretary